

## ORDINANCE NO. F-1952

### AN ORDINANCE AMENDING THE TEXT OF THE ZONING ORDINANCE ARTICLE II, DEFINITIONS; ARTICLE XXVI, PERSONAL WIRELESS SERVICES; AND ARTICLE XXX, ABOVE GROUND SERVICE FACILITIES

**WHEREAS**, the Corporate Authorities of the City have determined that it is appropriate and necessary to amend the text of the Wheaton Zoning Ordinance, Article II, Definitions; Article XXVI, Personal Wireless Services; and Article XXX, Above Ground Service Facilities to manage and address the growth and expansion of cellular technologies, which include Small Cell Sites and Distributed Antenna Systems, in the City's various zoning Districts; 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 City Council, acting as a hearing body, on June 27, 2016, regarding an amendment to the text of the Wheaton Zoning Ordinance, Article II, Definitions; Article XXVI, Personal Wireless Services; and Article XXX, Above Ground Service Facilities.

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

**Section 1:** That: Article II "Definitions," Article XXVI "Personal Wireless Services," and Article XXX "Above Ground Service Facilities" of the Wheaton Zoning Ordinance are hereby repealed and rescinded in their entirety and replaced with a new Article II, to be entitled "Definitions," a new Article XXVI to be entitled "Personal Wireless Services," and a new Article III to be entitled "Above Ground Service Facilities" of the Wheaton Zoning Ordinance which shall read as follows:

#### ARTICLE II DEFINITIONS

Above Ground Service Facility, Service Facilities or Facilities – An above ground structure, used by an Entity to provide Service to the public, which has an above ground volume greater than 24 cubic feet but excluding buildings, towers, utility poles, watertowers and standpipes.

Accessory Building or Use: A building or use which:

1. Is subordinate to and serves a principal building or use;
2. Is subordinate in area, extent and purpose to the principal building or principal use served;
3. Contributes to the comfort, convenience or necessity of occupants in the principal building or principal use served; and
4. Is located on the same parcel of property as the principal building or principal use served.

Adult Day Care Facility: A Facility providing care for elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day. All such Facilities shall comply with the requirements for such Facilities as set forth in Chapter II, Part 240, of the 89 Illinois Administrative Code or as subsequently amended.

Alley: A dedicated public right-of-way, other than a street, that affords a secondary means of access to abutting property.

Alternating, Structural: See Structural Alteration.

Amendment: Any modification, alteration or change of zoning district, regulation, variation, planned unit development, authority or special use.

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.

Apparel Stores: Stores selling clothing for men, women and children at retail.

Athletic Training School: Schools offering instruction in various athletic endeavors including but not limited to gymnastics and martial arts.

Attention-Getting Device: Any pennant, banner, propeller, spinner, streamer, string of lights, search light, balloon, or similar device or ornamentation.

Auto Parts Store: An establishment for selling automotive parts at wholesale and retail, including machine shop service, but excluding the servicing of automobiles on the premises. An establishment offering automotive parts for retail sale only need not be considered an "Auto Parts Store."

Automobile Repair Facility: An establishment for the general repair, engine rebuilding, reconditioning, body and frame repair, or painting of motor vehicles. The retail sale of automobile fuels shall not be permitted, except as incidental to the principal use.

Automobile Sales-New Car Dealers: The sales of new and used automobiles, motorcycles and trucks up to a Gross Vehicle Weight Rating (GVWR) of 19,500 pounds in operating condition, including the storage of automobiles, motorcycles and trucks up to a Gross Vehicle Weight Rating (GVWR) of 19,500 pounds in operating condition and the repair and servicing of such vehicles.

Automobile Sales-Used Car Dealers: The sales of used automobiles, motorcycles and trucks up to a Gross Vehicle Weight Rating (GVWR) of 19,500 pounds in operating condition, including the storage of automobiles, motorcycles and trucks up to a Gross Vehicle Weight Rating (GVWR) of 19,500 pounds in operating condition and the repair and servicing of such vehicles.

Automobile Service Station: An establishment for the servicing of automobiles. Services offered may include the retail sale of automobile fuels, lubricating oil or grease, tires, batteries, or minor automobile accessories; the installation of tires, batteries, and minor accessories; minor automobile repairs; washing or waxing of motor vehicles by hands; or the sale of convenience-

type food and drug items. Major automobile repairs, including engine rebuilding or major reconditioning of worn or damaged motor vehicles or trailers, collision service, including body, frame, or fender straightening or repairing, and painting of motor vehicles, shall be prohibited.

Awning: An overhead cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

Banks and Financial Institutions: Commercial banks, currency exchanges, savings and loan associations, and other similar financial institutions. This definition shall not include business and professional offices such as loan and mortgage offices, finance companies, stock brokers, and investment bankers.

Banquet Facility: With or without another use and except for an Inn, a facility catering to parties and meetings which may include the preparation of and serving of food, and liquor, and the providing of entertainment. The facility may be further controlled by conditions of a Special Use Permit. In no case shall the parking requirements for a banquet facility be less than one (1) space for every three (3) legal occupants thereof.

Beverage Distribution Centers: Warehouses for the storage and distribution of soft drinks and other non- alcoholic beverages but not including bottling plants and similar industrial uses.

Block: A tract of land bounded by streets, or by a combination of street, railroad right-of-way, or waterways.

Boat Trailer: A trailer, not used commercially, constructed and used for carrying personal property designed for navigation on the water.

Building: Any covered structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind, which is permanently affixed to the land or any covered or uncovered equipment permanently affixed to the land acting as a subordinate station for the distribution of electric current or other utilities.

Building Height: The total vertical distance from grade level to the highest point of the roof surface.

Bulk Regulations: Regulations controlling the size of buildings or other structures and the relationships of buildings, structures, and uses to each other and to open areas and lot lines. Bulk regulations include regulations controlling:

1. Maximum height
2. Minimum lot size
3. Maximum lot coverage and maximum floor area ratio, whichever is less.
4. Minimum lot width
5. Minimum size of yards and setbacks
6. Minimum usable open space

Bus: Every motor vehicle designed for carrying more than ten (10) passengers and used for the transportation of persons, and every motor vehicle other than a taxicab, designed and used for the transportation of persons for compensation.

Business and Professional Office: An office used primarily for correspondence, administration, research, training, editing, or the creation of written or graphic materials, or the office of an accountant, doctor (excluding veterinarians), dentist, attorney, real estate broker, insurance broker, architect, engineer, psychologist, or similar professional person. Business and professional offices shall not include retail sales, manufacturing, or fabrication except that which is accessory to a professional type use and is custom made, such as the making of dentures or the grinding of lenses for eye glasses.

Camping Trailer: A trailer, not used commercially, constructed with partial side walls which fold for towing and unfold to provide temporary living quarters for recreational camping or travel use.

Canopy: Any structure, movable or stationary, attached to and deriving its support from framework or posts or other means independent of a connected structure for the purpose of shielding a platform, stoop or sidewalk from the elements.

Car Wash: An establishment for the washing of motor vehicles, either by automatic or semi-automatic mechanical devices, or by providing space, water, equipment, or soap for the washing of more than one automobile at one time by customers.

Carry-Out Restaurant: An establishment whose principal business is the sale of foods or beverages to the consumer in a ready-to-consume state, usually served in disposable containers, and where consumption of such items on the premises is prohibited.

College: A school of higher learning accredited by the State of Illinois and equipped to qualify students for degrees of scholastic achievement.

Commercial Vehicle: Any vehicle classified as a vehicle of the second division, pursuant to the provisions of the Illinois Motor Vehicle Code, designed for carrying more than ten (10) people or designed or used for carrying freight or cargo and operated for the transportation of persons or property in the furtherance of any commercial or industrial enterprise, for hire or not for hire. It shall be prima facie evidence that a vehicle is a commercial vehicle if it bears second division vehicle registration (license) plates, except "RV" recreational vehicle registration plates, pursuant to the provisions of the Illinois Motor Vehicle Code.

Condominium: Property submitted to the provisions of the Condominium Property Act of the State of Illinois.

Contiguous: Parcels which are directly adjacent to each other, having a common lot line of at least fifty (50) feet in length, shall be considered contiguous. Parcels separated by an alley shall

also be considered contiguous if at least fifty (50) feet of the full width of the alley right-of-way touches both parcels. Parcels separated by a public street shall not be considered contiguous.

Contractor's Heavy Equipment: Any and all motorized equipment used in the excavation or improvement of real property and in the construction of structures of any nature.

Convenience Filling Station: An establishment offering automotive fuels for retail sale; other items offered for sale may include lubricating oil, minor automobile accessories, and convenience food and drug items. Motor vehicle repair work or service of any kind, except emergency repairs, is prohibited.

Corner Lot: A lot which adjoins the point of intersection or meeting of two (2) or more streets and in which the interior angle formed by the street lines is one hundred thirty-five degrees (135°) or less. If the street lines are curved, the angle shall be measured at the point of intersection of the extensions of the street lines in the direction which they take at the intersection of the street line with the side lot line and with the rear lot line of the lot. If the street line is curved at its point of intersection with the side lot line or rear lot line, the tangent to the curve at that point shall be considered the direction of the street line.

Curb Level: The "curb level" for any building is the level of the established curb in front of such building measured at the center of such front. Where no curb elevation has been established, the mean elevation of the finished lot grade immediately adjacent to a building shall be considered the "curb level."

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.

District: A section of the City of Wheaton for which regulations governing the height, volume, area and use of buildings and premises are the same.

Donation Drop Box: A receptacle used for the collection of used clothing, shoes, books and small household items donated by the public for redistribution.

Dry Cleaning and Laundry Depot: An establishment or business operated or maintained for the pick-up and delivery of dry cleaning and/or laundry without the maintenance or operation of any laundry or dry cleaning equipment or machinery on the premises.

Dry Cleaning Plant: An establishment in which clothing and other fabrics are dry cleaned professionally.

DVD Vending Machine: A DVD vending machine is any receptacle used for the distribution and collection of DVD rentals to the public.

Dwelling Unit: One (1) or more rooms in a residential building or residential portion of a building which are arranged, designed, used or intended for use by one (1) family, and which

includes cooking space and bathroom Facilities reserved for the occupants thereof.

Entity: means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, a unit of local government, or a receiver, trustee, guardian or other representative appointed by order of court, or any other legally recognized organization, whether for-profit or not-for-profit. The City shall not be considered a “Person” or “Entity.”

Family: Either (a) an individual or two (2) or more persons related by blood, marriage, or adoption, including foster children, living together as a single housekeeping unit in a dwelling unit; or (b) a group of not more than four (4) persons who need not be related by blood, marriage, or adoption, living together as a single housekeeping unit in a dwelling unit; plus in either case, usual domestic servants. Any dwelling meeting the definition of a Group Care Home, four (4) unrelated individuals may reside in the same dwelling unit along with one (1) additional staff member, for a total of five (5) unrelated individuals.

Fast Food or Drive-In Restaurant: An establishment whose principal business is the sale of food or beverages to the consumer in a ready-to-consume state for consumption either on or off the premises, and whose design or principal method of operation includes one or both of the following characteristics:

1. Food or beverages are served in disposable containers.
2. Foods or beverages are served directly to the customer in a motor vehicle.

Fence: A free-standing structure of metal, masonry, composition or wood or any combination thereof, resting on or partially buried in the ground and rising above ground level, and used for confinement or screening.

Flashing Sign: Any directly or indirectly illuminated sign either stationary or moving, which exhibits changing light or color effects.

Floor Area: The sum of the gross horizontal areas of the several floors of a building, or a portion thereof, devoted to a use. Floor area shall be measured from the exterior wall surface, or from the center line of walls joining two rooms or buildings. The following shall be included in the computation of floor area, except as otherwise provided:

1. Any basement, cellar or attic floor space which is finished for use;
2. Interior balconies, mezzanines, and penthouses;
3. Porches which are enclosed and finished for year-round use;
4. Accessory storage areas within selling or working space, such as counters, racks, or closets;
5. Hallways, entryways, and waiting rooms.

The following may be excluded from the computation of floor area:

1. Floor space devoted primarily to the housing of mechanical or electrical equipment;

2. Floor space devoted primarily to storage, except accessory storage as described above;
3. Floor space devoted to off-street parking or loading Facilities;
4. Stairwells, landings and elevator shafts.

Where any building consists of, or is devoted entirely to the housing of mechanical or electrical equipment (commonly referred to as a public or private utility substation), the sum of the gross horizontal area of said building shall be its floor area.

Floor Area, Gross: For the purpose of determining Floor Area Ratio, the gross floor area of a building or buildings shall be the sum of the horizontal areas of the several measured from exterior faces of exterior walls, without deduction for hallways, stairs, closets, thickness of walls, columns, and shall also include the following:

1. A basement or cellar having more than three and one-half ( $3\frac{1}{2}$ ) feet in height above adjacent grade around fifty percent (50%) or more of the basement perimeter.
2. In the case of a basement or cellar not fitting the description of subsection 1 above, but having normal direct access to the outside not through another floor, one-half ( $\frac{1}{2}$ ) of the basement or cellar area shall be included.
3. An attic, the space between the ceiling beams of the top story and the roof rafters, which has a fixed stairway as a means of access and a height of seven and one-third ( $7\frac{1}{3}$ ) feet above the attic floor.
4. Interior balconies and mezzanines.
5. Enclosed porches and sun rooms.
6. Roofed-over decks, patios, porches, and stairs.
7. Unroofed decks, patios, porches, and stairs over four (4) feet above the average grade of adjoining ground.
8. All square footage in excess of five hundred (500) square feet in any detached or attached garage or other accessory structure.

Floor Area Ratio: The numerical value obtained through dividing the gross floor area of a building or buildings by the total area of the lot on which such building or buildings are located.

Frontage: The length of a front lot line or lines.

General Standards: Those regulations listed under each separate use district under the heading "Standards" plus the regulations contained in Article III (Zoning Districts), Article XXII (Off-Street Parking and Loading), Article XXIII (Signs), Article XXIV (Accessory Uses and Home Occupations), and Article XXV (Performance Standards).

Grade Level: A horizontal reference plane representing the average finished ground level at a perimeter which is four (4) feet from the exterior walls of the building.

Ground Sign: A sign self-supported by posts or other supports independent of any building or structure.

Group Care Home: Group Care Home means (a) one residential dwelling maintained as a single housekeeping unit occupied by special needs individuals or (b) no more than two residential dwellings occupied by special needs individuals on the same zoning lot each being operated as a separate housekeeping unit but both being under the control and management of a single not-for-profit organization. In both instances no more than a total of 15 persons, including caregivers, shall occupy one residential dwelling or two residential dwellings in combination with each other. The total number of occupants of a Group Care Home may be further limited by the conditions of the Special Use Permit where lawful. The occupants of a Group Care Homes are not required to meet the definition of a "Family" as set forth in the Zoning Ordinance. Notwithstanding other provisions of this Zoning Ordinance, two dwellings on a single zoning lot shall not require five hundred (500) feet of separation. A Group Care Home of two dwellings on a single zoning lot shall satisfy the bulk regulations, parking requirements, and other requirements and standards applicable to the zoning district and zoning lot as if the two dwellings were one. A group care home dwelling may have separate bath and kitchen Facilities for live in staff. For purposes of this definition the term "special needs individuals" includes, but is not limited to, developmentally disabled persons, alcoholics, the mentally ill, or other persons participating in counseling, respite or rehabilitation programs. Group Care Homes shall provide a program structured to meet the social, rehabilitative, and respite needs of persons residing therein, in a residential community setting.

Prior to admitting residents, the Group Care Home shall file for and obtain a license from the appropriate Federal, State, or County agencies. If no license is required by a Federal, State, or County agency, the Group Care Home shall file for and obtain a Group Care Home license as provided for by Chapter 26 of the Wheaton City Code. A valid existing Federal, State, County or City license shall be a condition precedent to the issuance of a Special Use Permit.

Prior to admitting residents, the Group Care Home shall obtain a letter approving the occupancy from the City Planner, pursuant to certifying that all codes and standards have been satisfied. The Group Care Home shall house such staff persons as is required to meet the standards of the licensing agencies. A foster care home shall not be classified as a Group Care Home, unless it fails to meet the definition of "Family" contained in Article II of this ordinance.

Height, Maximum: The vertical distance from grade level to the highest part of a building or structure. The following may exceed the maximum height limitations:

- 1) Chimneys, flues, stacks, fire escapes, elevator enclosures, ventilators, skylights, Personal Wireless Facilities, antennas, and similar roof structures required to operate and maintain the building on which they are located, except as specifically regulated by this ordinance.
- 2) The maximum height for Personal Wireless Service Facilities shall be as are set forth in Article XXVI of this Ordinance.



Historical and Architectural Education Centers: A Facility within an existing structure not less than fifty (50) years old and owned and operated by an Entity no part of the income of which is distributable to its members, directors, or officers and whose principal location is within the City of Wheaton, Illinois, and whose purpose is the promotion of the public awareness of, and the providing of educational resources for, Wheaton history and architecture.

Uses of said center shall include any two (2) or more of the following:

1. Resource library;
2. Archive storage;
3. Displays and exhibits;
4. Meetings and classes.

An additional use may include one (1) dwelling unit. Any signs on the real estate or improvements thereon shall conform to the provisions of Section 23.4 and 23.4.1.

Hotel/Motel: A building with 21 or more guest rooms offering temporary lodging for compensation for a period of one day or more, with or without restaurants, shops, and meeting rooms, open to the public; further controlled by conditions of Special Use.

Identification Sign: A sign identifying the business conducted on the premises.

Inn: A building containing guest rooms offered to the public for compensation, limited to the following:

1. No more than twenty (20) guest rooms shall be provided.
2. Customary Inn services, such as maid, telephone, secretarial and desk services, laundering of linens, food and cooking service including a restaurant, with service in the guest rooms or any designated area.

The use and operation of a restaurant for persons other than guests occupying any of the guest rooms shall be specifically authorized, if at all, and regulated pursuant to the provisions of any Special Use Permit authorizing the use and operation of an Inn.

3. Meeting rooms for business and non-business uses, with incidental food service, available to guests or the public for compensation; provided, however, the meeting rooms shall not; (1) be the primary purpose of use of the Inn; (2) exceed twenty-five percent (25%), in gross measurement, of the gross floor space of the entire Inn.  
The number of people occupying the meeting rooms, and the hours of use and operation of the meeting rooms, shall be regulated pursuant to the provisions of any special use permit authorizing the use and operation of an Inn.
4. Signs shall not exceed ten square feet (10') in area and shall not have internal illumination.

Kennel: An establishment where four (4) or more dogs or cats are bred, trained, or boarded, each having an age of four (4) months or more.

Laundry: An establishment in which clothing and other fabrics are laundered professionally.

Lawful Non-Conforming Use: A use lawfully established prior to the passage of this ordinance or any amendment to it prohibiting such use.

Loading Dock: A platform for loading or unloading goods or materials between vehicles and buildings or structures.

Lot: A parcel of land which is either a "Lot of Record" or a "Zoning Lot."

Lot Coverage: That percentage of a lot which, when viewed directly from above, would be covered by a building or buildings or any part thereof, excluding open steps, terraces and cornices projecting not more than .76 meters (thirty inches).

Lot Depth: The distance between the midpoint of the front lot line and the midpoint of the rear lot line.

Lot Line: Lot boundary line. See Lot Line, Front; Lot Line, Rear; Lot Line, Side.

Lot Line, Front: A street line forming the boundary of a lot. For corner lots, the front lot line shall be the shortest lot line fronting on the streets. Lots having two street lines generally parallel to and opposite each other, forming the boundaries of the lot, shall be considered to have two front lot lines. (Such lots are commonly known as double frontage lots or through lots).

Lot Line, Rear: The lot line that is most distant from, and is, or is most nearly, parallel to the front lot line. If a rear lot line is less than fifteen (15) feet (4.57 m.) long, or if the lot comes to a point at the rear, the rear lot line shall be a line at least fifteen (15) feet (4.57 m.) long, lying wholly within the lot, parallel to the front lot line.

Lot Line, Side: A lot line which is neither a front lot line nor a rear lot line.

Lot of Record: An area of land which is designated as a separate platted subdivision lot in a subdivision plat recorded in the office of the County Recorder of Deeds.

Lot Size: The area of a horizontal plane bounded by the front, side and rear lot lines.

Lot Width: The distance between the side lot lines, as measured by a straight line drawn between the intersections of the side lot lines with the established front setback line.

Lot, Zoning: A single tract of land in common ownership located within a single block, which is used or occupied for any principal use, whether permitted, special or nonconforming. A "Zoning Lot" need not coincide with a Lot of Record, and may consist of:

1. A single Lot of Record;
2. A portion of a Lot of Record;
3. A combination of complete Lots of Record; of complete Lots of Record and portions of Lots of Record; or of portions of Lots of Record; and/or
4. A piece of property described by metes and bounds.

Masonry Materials: Shall mean and include brick, pre-cast concrete, textured concrete block, stone, or other masonry material of equal characteristics. The term Masonry Materials does include brick and stone veneer. The term Masonry Materials does not include stucco, whether cementitious or synthetic or cementitious siding or panels.

Minimum Setback: See Setback, Minimum.

Mortuary: A funeral home.

Motor Home, Mini Motor Home, or Van Camper: A self-contained motor vehicle, not used commercially, designed or permanently converted to provide living quarters for recreational, camping or travel use, with direct walk-through access to the living quarters from the driver's seat.

Moving Sign: Any sign, all or part of which moves, rotates or gives the illusion of movement.

Multiple Family Dwelling: Any building or portion thereof providing two (2) or more separate dwelling units.

Nameplate: Any sign not exceeding 929 square centimeters (one (1) square foot) in area indicating the name and/or address of each occupant, and, where applicable, a professional status, but not indicating a product or business.

Neutral Host Provider: A neutral host provider means an independent third party host which owns and assumes financial, regulatory, legal and technical responsibility for deploying, installing and maintaining telecommunication Facilities providing such equipment and services for a fee to telecommunication Entities providing telecommunication services directly to the public.

Non-Residential Use or Building: Any use or building other than a residential use or building.

Noxious Matter: A substance which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects on the physical well-being of individuals.

Nursery School: A child care facility receiving more than eight children for daytime care during all or part of the day. The term "nursery school" includes facilities called "day care centers," "child care centers," "day nurseries," "kindergartens," and "play groups," with or without stated educational purposes.

The term does not include (a) kindergartens or nursery schools or other daytime programs operated by public or private elementary school systems or secondary level school units or institutions of higher learning; (b) facilities operated in connection with a shopping center or service, or other similar facility, where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises, or are in the immediate vicinity and readily available; (c) special activities programs, including athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations.

Odor Threshold: A concentration of odorous substance in the air which will produce an odor sensation.

Office: See Business and Professional Offices.

Outbuilding: A business or commercial use part of, but not attached to, the main unified center, which may or may not be on a separate subdivided lot.

Outdoor Storage: The storage of goods and materials outside of any building or structure, but not including storage of a temporary or emergency nature.

Outdoor Storage Unit, Temporary Portable: A temporary outdoor portable storage unit means any unit including but not limited to, a trailer, box, or shipping container, which is typically rented to owners or occupants of property for their temporary outdoor storage use and which is delivered and removed by truck.

Parking Bay: A row of parking spaces with one access aisle.

Parking Space: A space for the on-street or off-street parking of a single motor vehicle.

Parking Space, Tandem: A space for the off-street parking of a motor vehicle which does not have a direct means of access to a drive aisle.

Particulate Matter: Dust, smoke or any other form of airborne pollution in the form of minute separation particles.

Personal Wireless Service. Any technology defined in 47 U.S.C. 332(c)(7) , and as may be amended from time to time, including commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, provided to personal mobile communication devices through wireless Facilities or any fixed mobile wireless services provided using personal wireless Facilities.

Personal Wireless Service Facilities or Facility. As defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as amended now or in the future, including equipment at a fixed location that enables Personal Wireless Service between user equipment and a communications network, including but not limited to: (a) equipment associated with Personal

Wireless Services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and (b) Transmission Tower, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Placard Sign: A temporary sign made of cardboard, lightweight plastic, or similar material, mounted out-of-doors and intended to be used during a sale, promotion, or special event. A permanent sign with changeable copy such as a reader board with changeable letters, or a permanent framework designed to hold changeable panels so as to prevent their movement by the wind, shall not be considered a placard. All such signs shall be subject to the requirements of this ordinance.

Principal Building: A building in which the principal or primary use on the lot is conducted.

Principal or Primary Use: The main use of land or buildings as distinguished from a subordinate or accessory use. Where a building contains more than one use, the principal or primary use shall be that which occupies the greatest floor area. If the floor area is evenly divided between different uses, the use having the greatest floor area on the first floor or story shall be the principal or primary use.

Private Club: An association organized and operated not-for-profit, for persons who are bona fide members paying annual dues, which owns, hires, or leases premises, the use of such premises being restricted to such members and their guests. The affairs and management of such association are conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting. The serving of food and meals on such premises is not prohibited, provided adequate dining room space and kitchen facilities are available.

Project Review Committee: A committee consisting of members from the Board of Zoning Appeals, the Plan Commission and the City Council. The committee informally provides the developer with information as to planning and zoning guidelines applicable to the proposed development.

Project Review Package: An administrative checklist used for reviewing applications for Planned Unit Developments.

Publisher: A business establishment engaged in the preparation of copy for literary or advertising materials and the like and which may include the use of linotype or other typesetting equipment and proof presses, but not production printing for sale as a service or product.

Rear Lot Line: See Lot Line, Rear

Rear Wall: See Wall, Rear

Rear Yard: See Yard, Rear

Recreational Vehicle: Every camping trailer, motor home, mini motor home, travel trailer, truck camper, portable camping units designed to be loaded onto the bed of a vehicle whether loaded onto the bed of the vehicle or not, and boat trailer used primarily for recreational purposes and not commercially. It shall be prima facie evidence that a vehicle is a recreational vehicle if it bears recreational ("RV") registration license plates.

Research Laboratory: A building in which are located facilities for scientific research, investigation, testing, or experimentation, but not including facilities for the manufacture of products for sale or further distribution.

Residential Use or Building: A building or use consisting of a dwelling unit or units, and accessory uses, such as rental or maintenance offices and recreational, laundry, or other facilities reserved for the use of residents and their guests. Residential uses or buildings shall not be deemed to include hostelrys, house trailers, lodging houses, dormitories, sororities and fraternities, nurse's residences, sanitariums, nursing homes, and convalescent homes.

Restaurant: An establishment whose principal business is the sale of foods or beverages to the customer in a ready-to-consume state, and whose design or principal method of operation includes one or both of the following characteristics:

1. Customers, normally provided with an individual menu, are served by a restaurant employee at the same table or counter at which said items are consumed.
2. A cafeteria-type operation where foods and/or beverages generally are consumed within the restaurant building.

Right-of-Way: Land located between property lines which is dedicated for use as a public thoroughfare.

Roof Sign: Any sign erected upon a building or structure which extends over the roof line of a building or structure.

Screening: Fencing or dense vegetation maintained for the purpose of concealing from view the area behind such fencing or dense vegetation throughout the year.

Semi-Trailer: Every vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Senior Citizen Home Sharing Facility: A residential dwelling, maintained as a single housekeeping unit, occupied primarily by persons 60 years of age and older, wherein the total number of occupants exceeds that which would be permitted by the definition of "Family," as contained in Article II, and "Particular Home Occupations Permitted," as contained in Article XXIV. The maximum number of occupants shall not exceed fifteen (15), and may be further limited as a condition of a Special Use Permit.

Such a facility shall not include care facilities such as nursing homes, sheltered care homes, or similar facilities as defined and regulated by the Illinois Revised Statutes. Such a facility shall comply with the bulk regulations, parking requirements, and other requirements and standards applicable to residential use.

Senior Housing Development: A residential development containing building or buildings for the care of the aged comprising of one or more of the following components:

Independent living – Residences targeted towards seniors that are generally the same as non-senior attached living units (i.e. apartments and condominiums) but with added communal facilities within the building, such as common dining and recreation areas.

Assisted living – Residences designed for people who cannot live independently but are not in need of the frequent and/or intense medical assistance commonly associated with skilled care. Assisted living residents require help with day-to-day activities, such as with bathing and dressing. This type of facility also includes communal areas such as common dining and recreation areas.

Skilled care – Residences for individuals in need of relatively frequent and/or intense medical assistance. This type of facility also has some communal facilities, but to a lesser degree.

Setback: The distance between the lot line and buildings or other uses on the lot.

Sign: A display, emblem, device or structure used to identify or advertise a business, product, service, event, institution, organization, location or individual.

Single Family Dwelling: A residential building containing only one dwelling unit.

Single Ownership: Ownership by an individual, partnership, corporation, cooperative, or condominium having control over exterior maintenance of buildings and grounds.

Single-User Lot: A building located on a single lot with a single business or commercial use.

Skateboard Ramp: Any outdoor structure(s) designed and principally intended to permit persons on skateboards to move continuously from one side to the other; commonly known as ramps or pipes.

Special Use: See Article V.

Specialty School: Schools offering instruction in languages, visual and performing arts, business skills, crafts and other similar specialties, but excluding any instruction involving the use of heavy machinery or any instruction conducted out-of-doors.

Story: The portion of a building included between the surface of any floor and the floor or roof next above. A mezzanine shall be considered a story if it exceeds thirty-three and one-third percent ( $33\frac{1}{3}\%$ ) of the area of the floor immediately below. A penthouse shall be considered a story if its area exceeds thirty-three and one-third percent ( $33\frac{1}{3}\%$ ) of the roof area.

Story, Half: A half story may consist of either:

1. A basement or cellar having more than two (2) feet, but not more than six (6) feet of its floor surface to clear ceiling height above grade.
2. A partial story under a sloping roof, having the intersection of its wall and roof decking on two opposite walls not more than four (4) feet above its floor surface, and having an area of not more than sixty percent (60%) of the floor area of the story immediately below.

Street Line: A line forming the boundary of the right-of-way of an existing or dedicated street.

Structural Alteration: Any change other than incidental repairs, which would prolong the life of supporting members of a building, or other structure, such as bearing walls or bearing partitions, columns, beams or girders.

Tandem Parking Space: A space for the off-street parking of a motor vehicle which does not have a direct means of access to a drive aisle.

Tow Truck: Every truck designed or altered and equipped for a use to push, tow, or draw disabled vehicles by means of a crane, hoist, tow bar, tow line, or auxiliary axle, and to render assistance to disabled vehicles.

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 which are prohibited.

Toxic Matter: A substance which is capable of causing injury to living organisms by chemical means when present in relatively small amounts.

Trailer: Every vehicle without motive power in operation, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no significant part of its weight rests upon the towing vehicle.

Travel Trailer: A trailer, not used commercially, designed to provide living quarters for recreational, camping, or travel use, and of a size or weight not requiring an over dimension permit when towed on a highway.



Truck Camper: A truck, not used commercially, when equipped with a portable unit designed to be loaded onto the bed which is constructed to provide temporary living quarters for recreational, travel or camping use.

Truck Tractor: Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Usable Open Space: Any open space, the smallest dimension of which is at least seven feet (2.134 m.) and which is not used for storage or for parking or movement of motor vehicles. Yards abutting a public street which are adequately screened for privacy, shall qualify as usable open space. Balconies, porches or roof decks may be considered usable open space, if usable for work, play or outdoor living areas. At least seventy (70) square feet (6.5 sq. m.) of required open space shall be contiguous to and provide for private usage of the individual dwelling unit.

Unified Center: A building or buildings located on a single lot which has at least two (2) separate businesses or commercial uses.

Use: Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Utility Pole: A structure owned or operated by a public utility as defined by 220 ILCS 5/3-105, or by a municipality as defined by 65 ILCS 5/1-1-2 that is designed to specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

Variations:

1. Administrative Variation: Any variation to decrease any setback or any minimum yard dimension by less than or equal to twenty-five percent (25%) or five (5) feet, whichever is less, or to increase the maximum height required by the applicable provisions, which is heard and decided by the Director of Planning & Economic Development.
2. Non-administrative variation: any administrative variation that has been denied or any other modification that does not qualify as an administrative variation.

Vibration: The periodic displacement of earth.

Wall, Front: The wall of a building which is nearest to, and most nearly parallel to, the front lot line of the lot on which the building is located.

Wall, Rear: The wall of a building which is nearest to, and most nearly parallel to, the rear lot line of the lot on which the building is located.

Wall, Side: Any wall of the building other than a front wall or rear wall.

Wall Sign: A sign on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure, or in which the wall forms the background surface.

Width, Lot: See Lot Width.

Yard: That portion of a lot which is not occupied by the primary structure.

Yard, Front: A yard extending along the full length of a front lot line and back to a line drawn parallel to the front lot line at a distance therefrom equal to the depth of the required front yard.

Yard, Rear: A yard extending along the full length of the rear lot line and back to a line drawn parallel to the rear lot line at a distance therefrom equal to the depth of the required rear yard.

Yard, Side: A yard extending along a side lot line and back to a line drawn parallel to the side lot line at a distance therefrom equal to the width of the required minimum side yard, but excluding any area encompassed within a front yard or rear yard. Dimensions of minimum side yards specified in the district regulations of this ordinance refer to the required width of each side yard rather than to the total width of both side yards, unless otherwise specified.

Zoning: The division of the City into districts and the application of use and bulk regulations in each district prescribing the manner in which land and air rights can be used and developed.

## **ARTICLE XXVI PERSONAL WIRELESS SERVICE FACILITIES**

### 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 and Antennas throughout the community; strongly encourage 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 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.

1. Additional use permitted on lot. Antennas and Transmission 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 Transmission Tower on such lot. For purposes of determining whether the installation of a Transmission 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 Transmission Towers may be located on leased property within such zoning lot(s).
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 Personal Wireless Service Facilities at the owner's expense.
3. Measuring Height of Personal Wireless Service Facilities. The measurement of the height of Personal Wireless Service Facilities shall include Antenna, base pad, and related appurtenances which shall be measured from the crown of the nearest improved right-of-way.
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.
5. Signage. No commercial advertising shall be allowed on any Personal Wireless Service Facility.
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 & Economic Development 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 Transmission Tower shall not exceed forty (40) inches in diameter.

7. Abandonment. Abandonment will be presumed where a Facility has not been used for the purpose for which it was installed for a period of sixty (60) consecutive days, or more, and where there have been no efforts to repair or renew the use during the 60-day period. The Entity owning, controlling or maintaining the Facility shall have the burden of establishing to the Director of Planning & Economic Development that the Facility is still being used within 30 days of the City's notice of abandonment. All notices described herein shall be regular U.S. Mail. Failure to respond to the Director of Planning & Economic Development's request for information regarding the abandonment of the Facility shall constitute irrefutable evidence of abandonment. Upon the Director of Planning & Economic Development's determination and final written notification to the Entity of such abandonment the Entity shall have sixty (60) days within which to:

- a.) Reactivate the use of the Facility or transfer the Facility to another Entity which makes actual use of the Facility promptly; or
- b.) Dismantle and remove the Facility and notify the Director of Planning & Economic Development in writing of the completion of such removal.

If the Entity believes that the final determination of abandonment by the Director of Planning & Economic Development is incorrect it may file a written appeal with the City Manager within five (5) days of the Director of Planning & Economic Development's final determination. The Director of Planning & Economic Development shall review the matter, take evidence if deemed necessary, and make a determination as to whether the Facility has or has not been abandoned. The City Manager's determination shall be final. If the Entity fails to prevail on appeal, reactivate, transfer to another active user or remove the Facility, the City shall have the right to have the Facility removed at the Entity's expense. The City shall be entitled to reimbursement for all costs and expenses associated with the removal and the storage of any Facility thereafter. If a stored Facility is not picked up from the City within twenty-eight (28) days of removal, the City may dispose of the Facility in its discretion. The City at that point will also be entitled to the cost of the disposal less any value the City secures for the Facility for scrap or resale. In addition, an administrative fee shall be assessed against the Entity for disposal of the Facility in an amount equal to the staff time related to all proceedings associated with the removal and disposal of the Facility. Failure to remove an abandoned Facility in conformance with this ordinance shall be considered a violation of the Code and subject to its general penalty provisions. No permit for any work in the City shall be granted to an Entity including its successors, which owes any some of money to the City for the removal and disposal of an abandoned Facility.

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.

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 an 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.
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.
12. Independent technical expert. The Director of Planning & Economic Development is hereby 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.

##### 1. General.

- a. The Director of Planning & Economic Development 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.
- b. Each applicant for administrative approval shall apply to the Director of Planning & Economic Development, providing the information set forth in Sections 26.5.2 and 26.5.4 of this Article.

- c. The Planning and Economic Development Department shall respond to each administrative approval application within thirty (30) days after receiving it by either approving or denying the application. If the Planning and Economic Development Department fails to respond to the applicant within said thirty (30) days, then the applicant shall be deemed to be denied. Within fourteen days (14) of the thirty (30) days, the Planning and Economic Development Department shall provide written reason for the denial.
  - 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 meets all of the standards contained herein to be approved as required by Section 26.5 if the Director of Planning & Economic Development 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.
2. Specific administratively approved uses. The following uses shall be approved by the Planning and 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 26.4.1(5) of this Article.
- a. Personal Wireless Service Facilities installed on a Transmission 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 Transmission 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 that:
    - (1) A Transmission Tower exceeding fifty (50) feet in height shall not be located within one-quarter mile ( $\frac{1}{4}$ ) from any existing Transmission Tower that is over fifty (50) feet in height.
    - (2) The separation requirement of Section 26.4.2(1)(a) 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

- f. The applicant's demonstration that there are other limiting factors that render existing Transmission Towers and structures unsuitable.
5. Setbacks and separation. The following setbacks and separation requirements shall apply to all Transmission 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 Planning and Zoning Board and/or City Council the goals of this Article would be better served thereby.
- a. Transmission Towers shall be set back from the closest adjacent residential principal structure a distance equal to the height of the Transmission Tower or twenty percent (20%) of the height of the Transmission Tower from the adjacent property line, whichever is greater.
  - b. Transmission Towers and accessory Facilities shall satisfy the minimum zoning district setback requirements.
  - c. Transmission Towers over fifty (50) feet in height shall not be located within one-quarter ( $\frac{1}{4}$ ) of a mile from any existing Transmission 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 Transmission Tower; and/or technical evidence acceptable to the Director of Planning & Economic Development 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.
6. Landscaping. The following requirements shall govern the landscaping surrounding Personal Wireless Service Facilities requiring a special use permit.
- a. 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.
  - b. In locations where the visual impact of the Facility would be minimal, the landscaping requirement may be reduced or waived.
  - c. Provisions of Section 6.11, Tree Preservation of the Wheaton Zoning Ordinance.

- c. Nature of uses on adjacent and nearby properties;
  - d. Surrounding topography;
  - e. Surrounding tree coverage and foliage;
  - f. Design of the Transmission Tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
  - g. 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 Transmission Tower site is to be leased, commercially reasonable sublease agreement, Facility constructed to structurally accept co-locations, and Transmission Tower site of sufficient size to accept co-locations.
  - h. Availability of suitable existing Transmission Towers and other structures as set forth in Section 26.5.4 of this Article.
4. Availability of suitable existing Transmission Towers or other structures. No new Transmission Tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning and Zoning Board and/or City Council that no existing Transmission Tower or structure can accommodate the applicant's proposed Antenna. Evidence submitted to demonstrate that no existing Transmission Tower or structure can accommodate the applicant's proposed antennas may consist of the following:
- a. No existing Transmission Towers or structures are located within the geographic area required to meet applicant's engineering requirements.
  - b. Existing Transmission Towers or structures are not of sufficient height to meet applicant's engineering requirements.
  - c. Existing Transmission Towers or structures do not have sufficient structural strength to support applicant's proposed Antenna and related equipment.
  - d. The applicant's proposed Antenna would cause electromagnetic interference with the Antenna on the existing Transmission Towers or structures, or the Antenna on the existing Transmission Towers or structures would cause interference with the applicant's proposed Antenna.
  - e. The fees, costs, or contractual provisions required by the owner in order to share an existing Transmission Tower or structure or to adapt an existing Transmission Tower or structure for sharing are unreasonable. Costs exceeding new Transmission Tower development are presumed to be unreasonable.



providing intended services to the residents of the City; and

- (c) 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 & Economic Development shall inform the applicant that it may request a Special Use Permit in conformance with Section 26.5 of this Article.

- b. Personal Wireless Service Facilities on an existing Utility Pole. Personal Wireless Service Facilities mounted on Utility Poles shall comply with Above Ground Service Facilities requirements as set forth herein and subject to the following conditions:

- (i) The addition of said Personal Wireless Service Facilities does not exceed more than seven (7) feet above the height of the existing Utility Pole to which it is attached.

- (ii) No guy or other support wires shall be used in connection with such Personal Wireless Service Facilities.

- (iii) Personal Wireless Service Facilities antenna and related equipment shall not exceed an above ground volume greater than 24 cubic feet.

- (iv) Replacement Utility Poles may be placed at the same height as the existing Utility Pole to accommodate Personal Wireless Service Facilities.

- (v) Personal Wireless Service Facilities, including antenna and related equipment shall be a color that blends with the surroundings of the existing Utility Pole on which it is mounted. Any wiring on the Utility Pole shall be covered with an appropriate cover or cable shield.

- (vi) Not more than one Personal Wireless Service Facility may be located on a single Utility Pole.

- (vii) Such Personal Wireless Service Facilities shall not be located within 300 feet of another such Personal Wireless Service Facility.

- c. 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, parking lot light pole or other free-standing structure) in a residentially zoned district (school, park, or church existing structure) other than a Transmission Tower so long as said Facilities add no more than seven (7) feet to the height of the existing structure, or replacement structure.

- d. Personal Wireless Service Facilities on any existing Transmission 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 Transmission Tower.

## 26.5 Special Use Permits.

### 1. General.

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

- a. If Personal Wireless Service 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.
  - b. In granting a special use permit, conditions may be imposed to the extent that the Planning and Zoning Board and/or City Council concludes are necessary to minimize any adverse effect of the proposed Personal Wireless Service Facilities on adjoining properties.
  - c. In recommending or granting a special use permit, the Planning and Zoning Board 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 Transmission Tower which is part of the applicant's proposed Personal Wireless Service Facility.
  - d. Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical shall be certified by a licensed professional engineer.
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, Transmission Tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses; and other information reasonably deemed by the Director of Planning & Economic Development to be necessary to assess compliance with this Article.
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:
- a. Height of the proposed Transmission Tower;
  - b. Proximity of the Transmission Tower to residential structures and residential district boundaries;

## **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. The goal of this Article is to encourage the location of Above Ground Service Facilities in areas that minimize the total number of Above Ground Service Facilities throughout the community; encourage users of Above Ground Service Facilities to locate them, to the greatest extent possible, in areas where the adverse impact on the community is minimal; encourage users of Above Ground Service Facilities to configure them in a manner that minimizes the adverse visual impact; and provide the owners of Above Ground Service Facilities the ability to provide such services to the community.

### 30.2 Applicability.

No Above Ground Service Facility shall be erected or installed except in compliance with the provisions of this Article. Above Ground 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 Above Ground 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 Guidelines and Performance Standards.

1. Additional use permitted on lot. For purposes of determining whether the installation of an Above Ground 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 Above Ground Service Facility may be located on leased property within such zoning lot(s).
2. Number of Service Facilities. Only one Above Ground Service Facility may be located on any zoning lot.
3. Lighting and Color. No visible or audible signals or lights or illumination shall be permitted on an Above Ground Service Facility. Above Ground 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.
4. Signage. No signs, advertising, or information shall be allowed on any Above Ground Service Facility, other than a plaque no larger than four inches (4") by six inches (6") identifying the Above Ground Service Entity.
5. Compatibility with Structure. When included as part of an existing building or structure, the Above Ground 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 an Above Ground 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.

6. Abandonment. Abandonment will be presumed where a Facility has not been used for the purpose for which it was installed for a period of sixty (60) consecutive days or more, and where there have been no efforts to repair or renew the use during the sixty (60) day period after written notice of abandonment from the City. The Entity owning, controlling or maintaining the Facility shall have the burden of establishing to the Director of Planning & Economic Development that the Facility is still being used within thirty (30) days of the notice. All notices described herein shall be regular U.S. Mail. Failure to respond to the Director of Planning & Economic Development's request for information regarding the abandonment of the Facility shall constitute irrefutable evidence of abandonment. Upon the Director of Planning & Economic Development's determination and final written notification to the Entity of such abandonment the Entity shall have sixty (60) days within which to:
  - a.) Reactivate the use of the Facility or transfer the Facility to another Entity which makes actual use of the Facility promptly; or
  - b.) Dismantle and remove the Facility and notify the Director of Planning & Economic Development in writing of the completion of such removal.

If the Entity believes that the final determination of abandonment by the Director of Planning & Economic Development is incorrect it may file a written appeal with the City Manager within five (5) days of the Director of Planning & Economic Development's final determination. The Director of Planning & Economic Development shall review the matter, take evidence if deemed necessary, and make a determination as to whether the Facility has or has not been abandoned. The City Manager's determination shall be final. If the Entity fails to prevail on appeal, reactivate, transfer to another active user or remove the Facility the City shall have the right to have the Facility removed at the Entity's expense. The City shall be entitled to reimbursement for all costs and expenses associated with the removal and the storage of any Facility thereafter. If a stored Facility is not picked up from the City within twenty-eight (28) days of removal the City may dispose of the Facility in its discretion. The City at that point will also be entitled to the cost of the disposal less any value the City secures for the Facility for scrap or resale. In addition, an administrative fee shall be assessed against the Entity for disposal of the Facility in an amount equal to the staff time related to all activities associated with the removal and disposal of the Facility. Failure to remove an abandoned Facility in conformance with this Ordinance shall be considered a violation of the Code and subject to its general penalty provisions. No permit for any work in the City shall be granted to an Entity including its successors, which owes any sum of money to the City for the removal and disposal of an abandoned Facility.

7. Equipment and Non Interference. Mobile or immobile equipment not used in direct support of an Above Ground Service Facility shall not be stored or parked on the site of an Above Ground 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 Above Ground 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. Above Ground Service Facilities shall not physically interfere with access to existing structures or utilities.

8. Substantial written evidence of denial. In the course of reviewing any request for any approval required under this Article, the Planning and Zoning Commission 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.
9. Petition for amendment. Should the application of this Article have the effect prohibiting an 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.
10. Nonconformities. Any Above Ground 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.
11. Independent technical expert. The Director of Planning & Economic Development is hereby 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.

- 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 Facility in question.

30.4.1(f) General - The landscaping requirements of Section 30.6 (3) of this article shall apply to Service Facilities granted an administrative permit.

30.4.2 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) Above Ground Service Facilities installed within the rear yard in any zoning district provided the Above Ground Service Facility is set back three feet (3') from the side and three feet (3') rear property lines and further provided:
  - 1. An Above Ground Service Facility shall not be located within a two hundred and fifty feet (250') radius from any existing or approved Above Ground 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; C-1, C-2, C-3, C-4, and C-5 Commercial; or O-R zoning districts 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.
  - c. 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) Above Ground Service Facilities installed within the side or front 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 that:
  1. The Above Ground Service Facility is set back three feet (3') from the side property line.
  2. An Above Ground Service Facility shall not be located within two hundred and fifty feet (250') radius of any existing or approved Above Ground Service Facility.
- c) Above Ground Service Facilities installed within the rear yard extended through the side yard on any corner lot within any zoning district except those lots where the main entrance to the building faces said side yard and further provided:
  1. An Above Ground Service Facility shall not be located within two hundred fifty feet (250') radius of any existing or approved Above Ground Service Facility.
  2. The Above Ground Service Facility is set back three feet (3') from the rear yard property line.

30.5 Prohibited use. Above Ground Service Facilities are prohibited in the front yard, corner side yard, except as provided for in Section 30.4.2(c), or any corner lot where the main entrance to the building faces the side yard 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.) Above Ground 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 Above Ground Service Facilities shall be processed and heard in conformance with the requirements of the Zoning Ordinance.
  - b.) Where located in a front yard the special use permit shall require that the Above Ground 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 Council.
  - c.) 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 Above Ground Service Facilities.
  - d.) 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.
- a.) Size of proposed Above Ground Service Facility;
  - b.) Proximity of the Above Ground 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;
  - f.) Design of the Above Ground Service Facility, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
  - g.) The physical relationship between the Above Ground Service Facility and existing structures and utilities.
  - h.)
3. Landscaping/Screening.
- a.) An Above Ground Service Facility shall be landscaped/screened with a variety of plant materials that effectively screens the view of the Above Ground 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 an Above Ground Service Facility sited on a large, wooded lot, natural growth around the property perimeter may be a sufficient buffer.



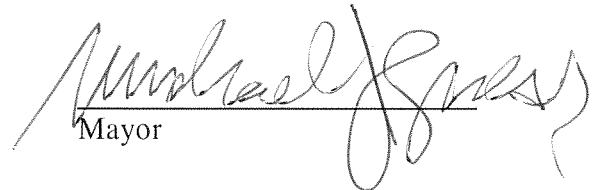
- b.) In locations where the visual impact of the Above Ground Service Facility would be and is likely to remain minimal for the foreseeable future, the landscaping requirement may be reduced or waived by the Director of Planning & Economic Development.
- c.) Provisions of Section 6.11, "Tree Preservation of the City Zoning Ordinance" shall apply.

**Section 2:** In all other respects, the Wheaton Zoning Ordinance is ratified and remains in full force and effect.

**Section 3:** All ordinances or parts of ordinances in conflict with these provisions are repealed

**Section 4:** That is any part or portion of this amending ordinance is determined to be unlawful or unenforceable by a Court of competent jurisdiction it shall not affect the validity of the remaining parts or portions of the ordinance.

**Section 5:** This ordinance shall become effective form and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
Mayor

ATTEST:

  
City Clerk

Roll Call Vote

Ayes: Councilwoman Fitch  
Councilman Rutledge  
Mayor Gresk  
Councilman Saline  
Councilman Scalzo  
Councilman Suess

Nays: None  
Absent: Councilman Prendiville

Motion Carried Unanimously

Passed: August 1, 2016  
Published: August 2, 2016

