

DRAFT 02-21-20

ORDINANCE NO. 20-????

VOTE: _____

Voting Aye: _____

Voting Nay: _____

Abstain: _____

DATE: _____, 2020

OTHER: Published in pamphlet form

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE WESTERN SPRINGS VILLAGE CODE RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF SMALL WIRELESS FACILITIES, UTILITY NOISE AND CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHT OF WAY

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act (50 ILCS 840/1 et seq.), acts to impose certain additional requirements on municipalities, including the Village of Western Springs (the “Village”), regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined small wireless facilities both within public rights-of-way and in other locations within the jurisdiction of the Village; and

WHEREAS, the President and Board of Trustees of the Village of Western Springs have previously made certain amendments to Title 8 (Public Ways and Property) of the Western Springs Municipal Code of 1997, as amended, by adopting, in Ordinance No. 18-2929 (the “Small Wireless Facilities Ordinance”), a new Chapter 13 (Small Wireless Facilities) relative to the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of small wireless facilities both within the public rights-of-way and in certain other locations within the jurisdiction of the Village; and

WHEREAS, since the enactment of the Small Wireless Facilities Ordinance, there has been extensive public discussion about small wireless facilities and how best to design, permit, locate, construct, deploy, regulate, operate, maintain, repair and remove small wireless facilities within the Village. Such public discussion has included input from residents gathered at a number of public meetings, including a town hall meeting hosted by the Village on small wireless facilities deployment held on February 13, 2020. While representatives of all the major wireless providers were invited to attend and participate in the town hall meeting, they all declined to participate; and

WHEREAS, as a result of such public discussions, various amendments to the Small Cell Ordinance, as well as the Village’s chapter on construction of utility facilities in the right-of-way (collectively, the “Code Amendments”), have been proposed and have been discussed at Workshop Meetings of the President and Board of Trustees of the Village of Western Springs held on _____ and _____, 2020, and at the _____, 2020 Regular Village Board Meeting of the President and Board of Trustees of the Village of Western Springs; and

WHEREAS, the President and Board of Trustees of the Village of Western Springs make the following findings in regard to the Code Amendments:

- A. The Village of Western Springs is a municipal corporation duly organized and existing under the laws of the State of Illinois; and

- B. The public rights-of-way within Village limits are used to provide essential public services to Village residents and businesses. The public rights-of-way within the Village are a limited public resource held by the Village for the benefit of its citizens, and the Village has a custodial duty to ensure that the public rights-of-way are used, repaired and maintained in a manner that best serves the public interest; and
- C. Growing demand for personal wireless telecommunications services has resulted in increasing requests nationwide and locally from the wireless industry to place small cell antenna facilities, distributed antenna systems, and other small wireless telecommunication facilities on utility and street light poles and other structures both within the public rights-of-way and in other locations; and
- D. The Village is authorized under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and Illinois law to adopt ordinances pertaining to the public health, safety and welfare; and
- E. The Village is further authorized to adopt the Proposed Code Amendments contained herein pursuant to its authority to regulate the public right-of-way under Article 11, Division 80 of the Illinois Municipal Code (65 ILCS 5/11-80-1 *et seq.*); and
- F. The Village is authorized, under existing State and federal law, to enact appropriate regulations and restrictions relative to small cell antenna facilities, distributed antenna systems, and other small personal wireless telecommunication facility installations both within the public rights-of-way and in other locations within the jurisdiction of the Village; and
- G. On April 12, 2018, Illinois Public Act 100-585, known as the Small Wireless Facilities Deployment Act (the "Act"), was enacted with an effective date of June 1, 2018, which imposed certain additional requirements on municipalities, including the Village, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined small wireless facilities both within public rights-of-way and in other locations within the jurisdiction of the Village; and
- H. In conformance with the requirements of the Act, and in anticipation of a continued increased demand for placement of small wireless facilities of the type regulated by the Act both within the public rights-of-way and in other locations within the jurisdiction of the Village, the Village President and Board of Trustees specifically find that it is in the best interests of the public health, safety and general welfare of the Village to adopt the Code Amendments below in order to enhance and supplement the previously adopted generally applicable standards enacted consistent with the Act for the design, permitting, location, construction, deployment, regulation, operation, maintenance, repair and removal of such small wireless facilities both within the public rights-of-way and in certain other locations within the jurisdiction of the Village so as to, among other things: (i) prevent interference with the facilities and operations of the Village utilities and of other utilities lawfully located in public rights-of-way or in other locations within the Village; (ii) preserve the character of the neighborhoods in which such small wireless facilities are installed; (iii) minimize any

adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which such facilities are installed; (iv) ensure the continued safe use and enjoyment of private properties adjacent to small wireless facilities; (v) provide appropriate aesthetic protections to designated areas and historic landmarks or districts within the Village; and (vi) ensure that the placement of small wireless facilities does not negatively impact public safety and the Village's public safety technology; and

WHEREAS, pursuant to the authority granted to the Village by the applicable provisions of the Illinois Municipal Code (65 ILCS 5/ *et seq.*), including Article 11, Division 80 of the Illinois Municipal Code (65 ILCS 5/11-80-1 *et seq.*), Article VII, Section 7 of the Illinois Constitution of 1970, Public Act 100-585 (the Small Wireless Facilities Deployment Act), and in accordance with the authority granted by Title 1 (Administration), Chapter 1 (Official Village Code), Section 1-1-3 (Amendments) of the Western Springs Municipal Code of 1997, as amended, the President and Board of Trustees of the Village of Western Springs find that the below Code Amendments are in the best interests of the Village, its residents, property owners, business owners and the public, and they approve the Code Amendments as set forth below.

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WESTERN SPRINGS, COOK COUNTY, ILLINOIS:

SECTION 1: The recitals above shall be and are incorporated in this Section 1 as if fully restated herein.

SECTION 2: Section 8-13-4 (Zoning) of Title 8 (Public Ways and Property), Chapter 13 (Small Wireless Facilities) of the Western Springs Village Code is amended to read in its entirety as follows:

8-13-4: ZONING:

A. Permitted Uses: Small wireless facilities shall be classified as permitted uses and shall not be subject to zoning review, if collocated in rights-of-way in any zoning district, or outside rights-of-way in the following zoning districts:

C2 – Community Shopping District;

O – Limited Office District;

ORI – Office Research and Limited Industrial District.

B. Prohibited Locations: Small wireless facilities shall be prohibited uses in the following zoning districts, except as otherwise required by applicable law:

A - Single-family residence district;

R1 - Single-family residence district;

R2 - Single-family residence district;

R3 - Two-family residence district;

R4 - Multiple-family residence district;

RB - Residential buffer district;

SFA - Single-family attached residence district;

R5 - Continuing care retirement community residence district.

C. Other Districts: In all other zoning districts, the Village’s normal zoning approvals, processes and restrictions shall apply, if zoning approval, processes or restrictions are required by the Village’s zoning ordinance.

SECTION 3: Section 8-13-5 (Permits; Application Process) of Title 8 (Public Ways and Property), Chapter 13 (Small Wireless Facilities) of the Western Springs Village Code is amended to read in its entirety as follows:

8-13-5: PERMITS; APPLICATION PROCESS: Unless otherwise specifically exempted in this chapter, a permit to collocate a small wireless facility within the Village is required in all cases. Permits are subject to the following:

A. Permit Applications: Permit applications for the collocation of small wireless facilities shall be made on a form provided by the Village for such purpose. In addition to any generally applicable information required of other communications service providers or for other installations in the public right-of-way, applicants must, when requesting to collocate small wireless facilities on a utility pole or wireless support structure, provide the following information:

1. Site specific structural integrity and, for a Village utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, that includes addressing the acceptability of the site for factors such as pole loading from existing utility equipment and conductors as well as the small wireless facility, and that specifically includes evaluations pursuant to American National Standards Institute (ANSI) standards relating to heavy loads and wind;

2. The location where each proposed small wireless facility or utility pole would be installed and digital photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. The photographs shall include a digital photo simulation of the proposed location providing “before and after” views demonstrating the true visual impact of the proposed small wireless facilities on the surrounding environment;

3. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless

facility covered by the application as it is proposed to be installed;

4. The equipment type and model numbers for the antennas and all other equipment associated with the small wireless facility;

5. To the extent commercially available, technologically compatible with the local network system, and already used in its national or regional wireless network system, the wireless provider is required to install small wireless facilities with antenna and other equipment that have the smallest visual profile.

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

7. Certification that, to the best of the applicant's knowledge, the collocation complies with the written design standards established by the Village, and with the various other requirements set forth in this chapter and code;

8. Copies of all licenses, permits and approvals required by or from the Village (i.e. zoning approval, where required), other agencies and units of government with jurisdiction over the design, construction, location and operation of said small wireless facility. The applicant shall maintain such licenses, permits and approvals in full force and effect and provide evidence of renewal or extension thereof when granted; and

9. In the event the small wireless facility is proposed to be attached to an existing utility pole or wireless support structure owned by an entity other than the Village, legally competent evidence of the consent of the owner of such pole or wireless support structure to the proposed collocation.

10. Information on whether a pre-application review was conducted with Village staff. It is recommended that applicants arrange a review of the proposed location and design of small wireless facilities and new wireless support structures with the Director of Public Works and other applicable staff prior to application. Such review does not constitute approval, but is instead designed to promote administrative efficiency by identifying existing utility conflicts and other issues that might be readily identified and/or resolved by communication between the applicant and Village staff.

11. A written affidavit signed by a radio frequency engineer certifying the small wireless facility's compliance with applicable FCC rules and regulations relative to radio frequency emissions, as well as technical data such as the frequencies in use, power output levels and antenna specifications, reasonably necessary to evaluate compliance with maximum permissible exposure levels set by the FCC, as well as a monitoring plan for the applicant's facility capable of tracking and recording the daily amounts or levels of radio frequency emissions produced by the equipment, in order to verify on an ongoing basis that the small wireless facility will not exceed applicable FCC rules and regulations.

12. Proof of all applicable licenses or other approvals required by the FCC.

13. A written report that analyzes acoustic levels for the small wireless facility and all associated equipment including, without limitation, all environmental control units, sump pumps, temporary backup power generators and, and permanent backup power generators in order to demonstrate compliance with applicable Village noise regulations, including, but not limited to, chapter 5-2 and any codes adopted thereunder. The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

14. Information showing the small wireless facility has received any required review (e.g., environmental assessment and review) by the FCC pursuant to the National Environmental Policy Act ("NEPA"), or is exempt from such requirements. If the applicant claims the small wireless facility is exempt, it must state the basis for the exemption and provide proof, including supporting documents that establish that the facility meets such exemption.

15. A written description and/or map identifying the geographic service area for the small wireless facility.

16. A sample of the proposed notice to be mailed pursuant to subsection B., below, and a list of intended recipients (including content and mailing envelope).

17. For work in the public right-of-way, evidence of posting of the security fund as required in section 8-11-10 of this code.

18. Where installation is proposed in right-of-way, as defined in this chapter, that consists of an "easement for compatible use", a certified copy of the original easement documents and other supporting documentation demonstrating that the applicant has the right to install, mount, maintain and remove a small wireless facility and associated equipment in or on the easement for the length of the permit. If the applicant is claiming access to the easement as an assignee or successor in interest, the applicant shall, in addition, provide documents demonstrating that its assigned or successor rights in the easement are sufficient to allow it to install, mount, maintain and remove the small wireless facility and associated equipment for the length of the permit.

19. Applicants are required to include with any application a master plan which identifies the location of the proposed small wireless facility in relation to all existing and potential locations in the Village that are reasonably anticipated for construction within two (2) years of submittal of the application.

B. Notice: Within three (3) business days of submission of an application containing all information required by this chapter and any associated regulations, an applicant, at its sole cost and

expense, shall provide written notice, by first class United States mail, to the owners and occupants of all real property at the addresses on file with the United States Postal office, and the residential manager for any multi-family dwelling unit that includes ten (10) or more units at the manager's business mailing address, any part of which is located within a two hundred and fifty (250) foot radius of the location of the applicant's proposed small wireless facility. Such notice shall be in a form provided by the Village, as may be revised from time to time, and shall be clearly marked as a notification of proposed small wireless facility installation, identify the applicant and wireless provider(s) who will utilize the facility, and include a plain language description of the proposed facility, photo simulations or illustrations depicting the proposed wireless facility, and the address where comments may be sent to the wireless provider and Village Manager within fifteen (15) calendar days of the date of the notice. The applicant shall supplement its application with proof of mailing of required notices no less than two calendar (2) days after mailing of the notices.

C. Means of Submission; Multiple Applications for Same Location: Permit applications, along with all supporting information, for the collocation of small wireless facilities shall be submitted by personal delivery or by other means approved by the Village. Multiple applications for collocation on the same utility pole or wireless support structure shall be processed based on a first fully complete application, first-served basis.

~~C. Multiple Applications for Same Location: Multiple applications for collocation on the same utility pole or wireless support structure shall be processed based on a first fully complete application, first-served basis.~~

D. Permit Application Fees: All applications for collocation of small wireless facilities shall be accompanied by a nonrefundable application fee in the following amounts:

Request to collocate a small wireless facility that includes the installation of a new utility pole	\$1,000.00
Request to collocate a single small wireless facility on an existing utility pole or wireless support structure	\$650.00
Request to collocate multiple small wireless facilities on existing utility poles or wireless support structures addressed in a single application	\$350.00 per small wireless facility

E. Permit review timelines:

1. **Completeness of Application:** Requests for the collocation of small wireless facilities shall be reviewed for conformance with the requirements of the Act, this chapter, and other applicable provisions of this code. Within thirty (30) days after receiving an application, the Village must determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. Processing deadlines are tolled from the time the Village sends a notice of incompleteness to the time the applicant provides the missing information.

An application shall be deemed complete if the Village fails to provide notification to the applicant within thirty (30) days of the date when all documents, information, and fees specifically enumerated in the Village's permit application form are submitted by the applicant to the Village.

2. **Existing Pole or Wireless Support Structure:** Requests for the collocation of small wireless facilities on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and either approved or denied within ninety (90) days of submission of a completed application. A permit application shall be deemed approved if the Village fails to approve or deny the application within ninety (90) days, subject to the following: if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than seventy-five (75) days after the submission of a completed application. The permit shall be deemed approved on the later of the ninetieth (90th) day after submission of the completed application, or the tenth (10th) day after receipt of the deemed approved notice by the Village. Receipt of a deemed approved notice by the Village shall not preclude the Village from denying the permit within the allowed time limit.

3. **New Utility Pole:** Requests for the collocation of small wireless facilities that include the installation of a new utility pole shall be processed on a nondiscriminatory basis and either approved or denied within one hundred and twenty (120) days of submission of a completed application. A permit application shall be deemed approved if the Village fails to approve or deny the application within one hundred twenty (120) days, subject to the following: if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than one hundred five (105) days after the submission of a completed application. The permit shall be deemed approved on the later of the one hundred twentieth (120th) day after submission of the completed application, or the tenth (10th) day after receipt of the deemed approved notice by the Village. Receipt of a deemed approved notice by the Village shall not preclude the Village from denying the permit within the allowed time limit.

F. **Tolling:** The time limitations for approval or denial of applications shall be tolled by notice to an applicant that its application is incomplete as set forth above, upon mutual agreement of the parties, or by a local, State or federal disaster declaration or similar emergency that causes a delay.

G. **Pole Replacement:** Permit approval shall be conditioned on the replacement of a

utility pole or wireless support structure at the applicant's sole cost where such replacement is deemed necessary for compliance with the requirements of this chapter or code relative to the siting of small wireless facilities, or other applicable codes and regulations that concern public safety.

H. Denial: The Village shall deny an application that does not meet the requirements of this chapter. The reasons for any denial of a permit shall be provided in a written notice of denial sent to the applicant, and shall include the specific code provisions or application conditions on which the denial is based.

I. Resubmittal After Denial: In the case of a permit denial, an applicant may cure the deficiencies identified in the notice of denial and resubmit a revised application once within thirty (30) days after the notice of denial is sent without payment of an additional application fee. The Village shall have thirty (30) days to approve or deny the resubmitted application or it is deemed approved, if the applicant has notified the Village of its intention to proceed with the permitted activity on a deemed approved basis, which notification may be submitted with the resubmitted application. Review of a resubmitted application is limited to the deficiencies cited in the original notice of denial. This subsection does not apply if a revised application is not resubmitted within thirty (30) days, or curing any deficiencies in the original application requires review of a new location, new or different structure for collocation, new antennas, or other wireless equipment associated with the small wireless facility. In such cases, a new application and application fee are required.

J. Consolidated Applications: Consolidated applications for small wireless facilities for the collocation of up to twenty-five (25) small wireless facilities shall be allowed if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. Each consolidated application shall provide all the information required by this chapter for each small wireless facility at each location. If such an application includes incomplete information for one or more small wireless facility collocations, or includes requests for small wireless facilities that do not qualify for consolidated treatment, or that are otherwise denied, the Village may remove such collocation requests from the application and treat them as separate requests. Separate permits may be issued for each collocation approved in a consolidated application.

K. Alternate Locations: If an applicant is seeking to install a new utility pole as part of its application, the Village may propose that the small wireless facility be located on an existing utility pole or existing wireless support structure within one hundred (100) feet of the proposed collocation. The applicant shall accept the proposed alternate location so long as it has the right to use the location on reasonable terms and conditions, unless the alternate location imposes technical limits or additional material costs as determined by the applicant. If the applicant refuses an alternate location based on the foregoing, the applicant shall provide legally competent evidence in the form of a written certification, under oath, describing the property rights, technical limits or material cost reasons that prevent the alternate location from being utilized.

L. Exemptions: No application, permit approval or fee shall be required from a

communications service provider authorized to occupy the right-of-way when the work in question is for:

1. Routine maintenance not requiring replacement of wireless facilities if the wireless provider notifies the Village in writing at least forty-eight (48) hours prior to the planned maintenance;

2. The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village in writing at least ten (10) days prior to the planned replacement and includes equipment specifications, including (i) equipment type and model numbers, for the replacement of equipment consistent with the equipment specifications information required on a permit application for original installation; and (ii) information sufficient to establish that the replacement is substantially similar. To the extent commercially available, technologically compatible with the local network system, and already used in its national or regional wireless network system, the wireless provider is required to, when replacing such small wireless facilities, install wireless facilities with antenna and other equipment that have the smallest visual profile. The wireless provider shall provide all information necessary and requested by the Village to establish that the replacement is substantially similar. Wireless facilities that vary significantly in design, or increase power output, frequency, bandwidth or performance, or change the location of the small wireless facility upon the utility pole or wireless support structure, or increase signal strength, or make other modifications in other key components, are not substantially similar, and are subject to standard application processes, permitting requirements, and fees. The Village has the sole right and responsibility to determine if a proposed small wireless facility is substantially similar to the existing small wireless facility; or

3. The installation, placement, maintenance, operation or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.

The foregoing shall not exempt communications service providers from Village permitting requirements where traffic patterns are affected or lane closures are required.

SECTION 4: Section 8-13-9 (General Requirements) of Title 8 (Public Ways and Property), Chapter 13 (Small Wireless Facilities) of the Western Springs Village Code is amended to read in its entirety as follows:

8-13-9: GENERAL REQUIREMENTS:

A. Public Safety Technology: A wireless provider's operation of a small wireless facility may not interfere with the frequencies used by a public safety agency for public safety communications. A wireless provider must install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment. Unacceptable interference is determined by and measured in accordance with industry standards and the FCC's

regulations addressing unacceptable interference to public safety spectrum or any other spectrum licenses by a public safety agency. If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC, including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675. The burden to establish the good faith effort shall be on the wireless provider, which shall timely deliver to the Village all information necessary to demonstrate its efforts to resolve the interference consistent with the Code of Federal Regulations sections cited above. Failure to remedy the interference as required herein shall constitute a public nuisance and the small wireless facility may be abated through the procedures for abatement of such nuisances set forth in this code.

- B. A wireless provider shall not construct or maintain any small wireless facility that:
1. Obstructs, impedes or hinders the usual travel or public safety on a right-of-way;
 2. Obstructs the legal use of right-of-way by utility users;
 3. Violates nondiscriminatory applicable codes;
 4. Violates or conflicts with chapter 8-11 (Standards for Construction of Utility Facilities on Rights of Way) or chapter 10-4 (Development Standards of General Applicability) of this code, or other applicable regulations set forth in this code or otherwise adopted by the Village, except to the extent such chapters, sections or regulations may be modified by the provisions of this chapter; or
 5. Violates the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*)
- C. Contractual Requirements: Wireless providers shall comply with all requirements imposed by a contract between the Village and any private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- D. Ground-Mounted Equipment: Wireless providers shall comply with the ground mounted equipment spacing requirements, if any, within rights-of-way as set forth in chapter 8-11 (Standards for Construction of Utility Facilities on Rights of Way) of this code.
- E. Undergrounding:
1. The wireless provider shall comply with Village code provisions or regulations

concerning undergrounding requirements, if any, that prohibit the installation of new or the modification of existing utility poles or equipment in the right-of-way.

2. A Wireless Provider may receive a variance from the director of municipal services or his or her designee, pursuant to the procedures set forth in section 8-11-21 (Variances) of chapter 8-11 (Standards for Construction of Utility Facilities on Rights of Way) of this code, to allow a small wireless facility to be located above ground in an area where Village ordinances or regulations prohibit or restrict above ground facilities if, in addition to demonstrating the conditions of section 8-11-21 have been established, the wireless provider can establish that:

a. Underground equipment is not technically feasible and there is no reasonable alternative or location that is more aesthetically favorable to adjacent property owners and to effective use and management of the right-of-way; and

b. An above ground small wireless facility at the proposed location is necessary at the proposed location to provide coverage in a specified area; and

c. An above ground small wireless facility at the proposed location will not disrupt traffic or pedestrian circulation or constitute a safety hazard; and

d. An above ground small wireless facility at the proposed location will not interfere with public safety uses or frequencies; and

e. Space exists within the public right-of-way to accommodate the above ground small wireless facility at the proposed location; and

f. An above ground small wireless facility at the proposed location will not create a safety hazard; and

g. The above ground small wireless facility is located and designed in such a way so as to minimize its visual impact on adjacent properties; and

h. In any historical area, that the above ground small wireless facility will not detrimentally affect the historical nature of the area.

3. Screening for Ground Mounted Facilities. Where a ground-mounted facility is allowed, such equipment shall be screened around the perimeter in accordance with a landscape plan sealed by a professional landscape engineer. Plant materials shall include a mixture of deciduous and coniferous planting materials. The owner or wireless provider shall be responsible for maintenance of all landscaping as provided in the approved landscape plan.

4. Future Undergrounding: The Village may, from time to time, make a decision to eliminate above-ground utility poles of a particular type generally, such as electric utility poles, in all or a significant portion of the Village. In the event that such a utility pole has a collocated small wireless facility in

place at the time of such a decision, the Village shall either:

a. Continue to maintain the utility pole, or install and maintain a reasonable utility pole or wireless support structure for the collocation of the small wireless facility; or

b. Offer to sell the utility pole to the wireless provider at a reasonable cost, or allow the wireless provider to install its own utility pole so it can maintain service from that location.

F. Collocation Limits: Wireless providers shall not collocate small wireless facilities on Village utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the Village utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subsection, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

G. Code Compliance: Wireless providers shall comply with applicable codes and local code provisions or regulations that concern public safety.

H. Radio Frequency Compliance. Wireless providers shall comply with the FCC's radio frequency emissions standards at all times. Wireless providers are required to perform on-going monitoring of small wireless facilities to ensure all equipment continues to operate within allowable FCC radio frequency emission ranges and shall, on a quarterly basis, provide to the Village a certification with supporting information confirming whether all of the wireless provider's small wireless facilities within the Village operated in compliance with all FCC radio frequency emission limits during the quarterly reporting period. The certified quarterly report shall be delivered to the Village Manager by the thirtieth (30th) of the month following the end of the calendar quarter. A wireless provider shall, upon request of the Village at any time, perform radio frequency testing of all or specific small wireless facilities, provide such testing results to the Village, and shall promptly respond to all Village requests for information and/or cooperation with respect to any of the foregoing. Village staff may, at the Village's option, accompany the wireless provider or its agents in the performance of such testing. The Village has the right, but not the obligation, to employ a qualified radio frequency engineer to conduct annual random and unannounced testing of permitted small wireless facilities to determine their compliance with all FCC radio frequency emission limits. In the event the Village decides to perform its own testing, the wireless provider shall allow the Village or its designee to have supervised access to the areas near the small wireless facility for inspections and field measurements. Any small wireless facility found not to comply with FCC radio frequency emission standards shall be immediately reported by the wireless provider to the FCC, with a copy of such report sent at the same time to the Village Manager, and shall be powered-down, adjusted, repaired, and/or replaced, or shut off and/or removed by the wireless provider within three (3) calendar days of the provider

becoming aware of the violation. Small wireless facilities that exceed the FCC’s radio frequency emissions standards are declared a public nuisance, and may be summarily abated by the Village. Failure by a wireless provider to cure a violation of the FCC radio frequency emission standards within three (3) calendar days shall result in a revocation of the applicable small wireless facility permit, and/or a citation for maintaining a public nuisance with a fine in the amount of seven hundred and fifty dollars (\$750), with each day of continued operation without cure being a separate violation. In the event the Village determines a small wireless facility is not in compliance with any legal requirements or conditions related to radio frequency, the wireless provider shall, in addition to the foregoing, be responsible for all costs and expenses incurred by the Village in connection with the investigation, testing, enforcement and/or remediation of such noncompliance.

I. Annual Certification. Each year on July 1, a wireless provider shall submit an affidavit to the Village which shall list, by location, all small wireless facilities it owns within the Village, and shall certify (1) each such installation remains in use; (2) such in-use facility remains covered by required insurance; and (3) each such installation which is no longer in use. Any small wireless facility that is no longer in use shall be removed by the wireless provider within thirty (30) calendar days of delivery of the affidavit.

J. Utility worker safety. Prior to the commencement of construction of a small wireless facility, the wireless provider must provide the Village with any required safety precautions for individuals working on or near the facility site. If refresher training, personal protective equipment, or tools are required for safety purposes related to a small wireless facility collocated on a Village-owned utility pole, then the wireless provider must reimburse the Village for all of its actual costs of those elements.

SECTION 5: Section 8-13-20 (Revocation of Permit) of Title 8 (Public Ways and Property), Chapter 13 (Small Wireless Facilities) of the Western Springs Village Code is amended to read in its entirety as follows:

8-13-20: REVOCATION OF PERMIT:

A. A permit to collocate a small wireless facility may be revoked for one or more of the following reasons:

1. The wireless provider obtained approval by means of fraud or made a misrepresentation of a material fact with respect to the permit application, or any required documentation or submittal.
2. The wireless provider failed to construct the small wireless facility in accordance with the approved plans.
3. The wireless provider failed to comply within any material condition of a permit issued.
4. The wireless provider substantially expanded or altered the use or the structure of the small wireless facility beyond what was requested in the permit application or approved, without

the approval of the Village.

5. The wireless provider failed to notify the Village of the replacement of small wireless facilities as required by this chapter.

6. A substantial change of law has occurred affecting the wireless provider's authority to occupy or use the property upon which the small wireless facility is located.

7. The small wireless facility interferes with vehicular or pedestrian use of the public right of way.

8. The wireless provider has failed to make a safe and timely restoration of the right-of-way or the property upon which the small wireless facility is located.

9. The wireless provider has failed to properly maintain the small wireless facility as required by this chapter.

10. The wireless provider has failed to abate interference with public safety communications in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

11. The small wireless facility has been abandoned and the wireless provider has failed to remove the small wireless facility as provided in this chapter.

12. The small wireless facility is found to have been in violation of FCC radio frequency emission standards and the wireless provider, after becoming aware of such violation, fails to shut-down or otherwise cure the violation within three (3) calendar days.

B. Written notification of the permit revocation shall be sent by certified mail or shall be personally delivered to the wireless provider setting forth the basis for the revocation. The wireless provider shall, within fourteen days of the notice of revocation, file a written response with the director of municipal services or his or her designee setting forth the reasons why the permit should not be revoked along with such evidence in opposition to the revocation as the wireless provider determines necessary. Failure to file a response with the director of municipal services or his or her designee shall be deemed an admission of the facts set forth in the notification of written notification and shall result in automatic revocation of the permit. The director of municipal services or his or her designee shall render findings and a decision within twenty-one days of the date of receipt of the wireless provider's response, if any.

C. If the director of municipal services or his or her designee revokes the permit, the wireless provider may file a written notice of appeal with the Village Clerk within twenty-one (21) days of notification of the permit revocation. Such notice shall contain a response to the decision of the director of municipal services or his or her designee. The Village Board shall hear the revocation appeal and render a decision on such appeal.

SECTION 6: Subsection D. of Section 8-11-4 (Permit Required; Applications and Fees) of Title 8 (Public Ways and Property), Chapter 8-11 (Standards for Construction of Utility Facilities on Rights of Way), of the Western Springs Village Code is amended to read in its entirety as follows:

D. Supplemental Application Requirements For Specific Types Of Utilities: In addition to the requirements of subsection C of this section, the permit application shall include the following items as applicable to the specific utility that is the subject of the permit application:

1. In the case of the installation of a new electric power, cable television, telecommunications or natural gas distribution system, evidence that any "certificate of public convenience and necessity" or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;

2. In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;

3. In the case of water lines, indicate that all requirements of the Illinois environmental protection agency, division of public water supplies, have been satisfied;

4. In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois environmental protection agency, division of water pollution control and the metropolitan water reclamation district, and any other local or state entities with jurisdiction, have been satisfied; ~~or~~

5. In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed; ~~or~~

6. In the case of small wireless facilities and associated utility poles or wireless support structures in the right-of-way, demonstrated conformance with the Village's adopted General Guidelines and Small Wireless Facility Design, Aesthetic, Stealth and Concealment Standards, where applicable, as such standards may be amended from time to time.

SECTION 7: A new Section 5-2-5 (Limitations on Utility Equipment Noise) of Title 5 (Public Health and Safety), Chapter 2 (Noise Control), of the Western Springs Village Code is added, to read in its entirety as follows:

5-2-5: LIMITATIONS ON UTILITY EQUIPMENT NOISE:

A. Utility equipment located in the public right-of-way and in residentially zoned districts shall be operated in such a manner so as to minimize any possible disruption to residents and occupants of nearby buildings caused by noise.

B. Backup generators, if needed, shall only be operated during periods of power outages, and for no more than one weekly testing period not to exceed fifteen (15) minutes, and shall not be tested on weekends or holidays, or between the hours of 5:00 p.m. and 7:00 a.m.

C. Except during periods of power outages, or during testing authorized pursuant to B. above, at no time shall any utility facility in a residentially zoned area be permitted to exceed 45 dBA or any other applicable noise levels imposed by codes adopted by the Village.

SECTION 8: To the extent necessary, all table of contents, indexes, headings and internal references or cross-references to sections contained in the Western Springs Municipal Code of 1997 that have been deleted or amended by the Code Amendments set forth above shall be amended by the Village's codifier so as to be consistent with the Code Amendments of this Ordinance.

SECTION 9: All ordinances or parts of ordinances in conflict with this Ordinance are expressly repealed.

SECTION 10: Except as to the Code amendments set forth above in this Ordinance, all Chapters and Sections of the Village Code, as amended, shall remain in full force and effect.

SECTION 11: Each section, paragraph, clause and provision of this Ordinance is separable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, nor any part thereof, other than that part affected by such decision.

SECTION 12: This Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

PASSED by the Board of Trustees of the Village of Western Springs, Cook County, Illinois, at a Regular Meeting thereof, held on the ___ day of _____, 2020 and approved by me as President on the same day.

Village President Alice F. Gallagher

ATTEST:

Acting Village Clerk James Horvath

This Ordinance was published by me in pamphlet form on the ___ day of _____, 2020.

James Horvath, Acting Village Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, James Horvath, Acting Clerk of the Village of Western Springs, in the County of Cook and State of Illinois, certify that the attached document is a true and correct copy of that certain Ordinance now on file in my Office, entitled:

ORDINANCE NO. 2020-????

**AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE WESTERN SPRINGS VILLAGE CODE
RELATIVE TO THE PERMITTING, REGULATION AND DEPLOYMENT OF SMALL WIRELESS FACILITIES,
UTILITY NOISE AND CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHT OF WAY**

which Ordinance was passed by the Board of Trustees of the Village of Western Springs at a Regular Village Board Meeting on the ___ day of _____, 2020, at which meeting a quorum was present, and approved by the President of the Village of Western Springs on the __ day of _____, 2020.

I further certify that the vote on the question of the passage of said Ordinance by the Board of Trustees of the Village of Western Springs was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Western Springs, and that the result of said vote was as follows, to-wit:

AYES:

NAYS:

ABSENT:

I do further certify that the original Ordinance, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Western Springs, this __ day of _____, 2020.

James Horvath, Acting Village Clerk

[SEAL]