
ORDINANCE NO. 24-25-26

An Ordinance Amending Chapter 33, Construction of Utility Facilities in the Rights-of-Way to Provide for the Regulation of Small Wireless Facilities

AN ORDINANCE PASSED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF JOHNSBURG
AT A REGULAR MEETING ON JANUARY 7, 2025
PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF JOHNSBURG

President

Edwin P. Hettermann

Board of Trustees

Beth Foreman
Mike Fouke
Josh Hagen
Greg Klemstein
Jamie Morris
Scott Letzter

Village Administrator

Claudett Sofiakis

ORDINANCE NO. 24-25-26

An Ordinance Amending Chapter 33, Construction of Utility Facilities in the Rights-of-Way to Provide for the Regulation of Small Wireless Facilities

WHEREAS, the Village of Johnsburg (the “Village”) is an Illinois municipality in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the Small Wireless Facilities Deployment Act (the “Act”), 50 ILCS 840/1 *et seq.*, regulating local treatment of Small Wireless facilities was effective June 1, 2018 and has subsequently been amended by Public Act 102-0009, effective June 1, 2021 and Public Act 103-0601, effective July 1, 2024, and

WHEREAS, federal regulations also govern the treatment of Small Wireless facilities by Illinois municipalities; and

WHEREAS, the Village is authorized, under existing state and federal law, to enact appropriate regulations and restrictions relative to small wireless facilities, distributed antenna systems and other personal wireless telecommunication facility installations in the public right-of-way as long as it does not conflict with state and federal law; and

WHEREAS, the Village Board finds it is appropriate and in the best interest of the Village and its residents to adopt an ordinance providing for the regulation of small wireless facilities in the Village in a manner consistent with applicable state and federal laws.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Johnsburg, McHenry County, Illinois, as follows:

SECTION 1: The above and foregoing recitals are hereby incorporated and made a part of this Ordinance as if fully set forth herein.

SECTION 2: Section 33.04-D, Supplemental Application Requirements for Specific Types of Utilities, of the Johnsburg Municipal Code shall be amended to add the following new subsection D-6:

6. In the case of the installation of Small Cell Antenna/Towers on either new or existing poles or structures, the provisions of Section 33.24 also shall apply and, in the event of any conflict, those provisions shall control.

SECTION 3: Section 33.21, Variances, of the Johnsburg Municipal Code shall be amended as follows (with the new text shown as underscored):

33.21 VARIANCES

- A. Request for Variance: A utility requesting a variance from one or more of the provisions of this Chapter must do so in writing to the Village Administrator (or their designee) as a part of the permit application. The request shall identify each provision

of this Chapter from which a variance is requested and the reasons why a variance should be granted.

B. **Authority to Grant Variances:** The Village Administrator (or their designee) shall decide whether a variance is authorized for each provision of this Chapter identified in the variance request on an individual basis.

C. **Conditions for Granting of Variance:** The Village Administrator (or their designee) may authorize a variance only if the utility requesting the variance has demonstrated that:

1. One or more conditions not under the control of the utility (such as terrain features or an irregular right of way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and

2. All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are not practical in relation to the requested approach.

D. **Additional Conditions for Granting a Variance:** As a condition for authorizing a variance, the Village Administrator (or their designee) may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this Chapter, but which carry out the purposes of this Chapter.

E. **Right to Appeal:** Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the Village Administrator (or their designee) under the provisions of this Chapter shall have the right to appeal to the Village Board, or such other board or commission as it may designate. The application for appeal shall be submitted in writing to the Village Clerk within 30 days after the date of such order, requirement, decision or determination. The Village Board shall commence its consideration of the appeal at the Board's next regularly scheduled meeting occurring at least 7 days after the filing of the appeal. The Village Board shall timely decide the appeal.

SECTION 4: Chapter 33, Construction of Utility Facilities in the Rights of Way, of the Johnsburg Municipal Code shall be amended to add the following new Section 33.24 entitled Small Wireless Facilities:

33.24 SMALL WIRELESS FACILITIES

A. Purpose and Scope:

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

2. Conflicts With Other Ordinances: This section supersedes all ordinances or parts of ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

3. Conflicts With State And Federal Laws: In the event that applicable Federal or State laws or regulations conflict with the requirements of this section, the wireless provider shall comply with the requirements of this section to the maximum extent possible without violating Federal or State laws or regulations.

B. Definitions: For the purposes of this section, the following terms shall have the following meanings:

ACT: The Illinois Small Wireless Facilities Deployment Act 50 ILCS 840/1 et seq., as may be subsequently amended.

ANTENNA: Communications equipment that transmits or receives electromagnetic radio frequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission (FCC) authorization, for the provision of personal wireless service and any commingled information services. The antenna does not include an unintentional radiator, mobile station or device.

APPLICABLE CODES: Building, Fire, Electrical, Plumbing, or Mechanical Codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

APPLICANT: Any person or entity that submits an application and the agents, employees and contractors of such person or entity.

APPLICATION: A request submitted by an applicant to the Village for a permit to collocate small wireless facilities at a specified location, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

COLLOCATE OR COLLOCATION: To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

COMMUNICATIONS SERVICE: Cable service, as defined in 47 USC 522(6), as amended; information service, as defined in 47 USC 153(24), as amended; telecommunications service, as defined in 47 USC 153(53), as amended; mobile service, as defined in 47 USC 153(53), as amended; or wireless service other than mobile service.

COMMUNICATIONS SERVICE PROVIDER: A cable operator, as defined in 47 USC 522(5), as amended; a provider of information service, as defined in 47 USC 153(24), as amended; a telecommunications carrier, as defined in 47 USC 153(51), as amended; or a wireless provider.

FCC: The Federal Communications Commission of the United States.

FEE: A one-time charge.

HISTORIC DISTRICT OR HISTORIC LANDMARK: A building, property, or site, or group of buildings, properties, or sites that are either: 1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the Federal agency to list properties and determine their eligibility for the National Register, in accordance with section VI.D.1.a.i through section

VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR part 1, appendix C; or 2) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the Village pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

LAW: A Federal or State Statute, common law, code, rule, regulation, order, or local ordinance or resolution.

MICRO WIRELESS FACILITY: A small wireless facility that is not larger in dimension than twenty four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height and that has an exterior antenna, if any, no longer than eleven inches (11").

MUNICIPAL UTILITY POLE: A utility pole owned or operated by the Village in public rights-of-way.

PERMIT: A written authorization required by the Village to perform an action or initiate, continue, or complete a project.

PERSON: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

PUBLIC SAFETY AGENCY: The functional division of the Federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

RATE: A recurring charge.

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

SMALL WIRELESS FACILITY: A wireless facility that meets both of the following qualifications: 1) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and 2) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty five (25) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

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

WIRELESS FACILITY: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: 1) equipment associated with wireless communications; and 2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: 1) the structure or improvements on, under, or within which the equipment is collocated; or 2) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

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

WIRELESS PROVIDER: A wireless infrastructure provider or a wireless services provider.

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

WIRELESS SERVICES PROVIDER: A person who provides wireless services.

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

C. Regulation Of Small Wireless Facilities:

1. Permitted Use: Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in paragraph i. regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated: a) in rights-of-way in any zoning district, or b) outside rights-of- way in property zoned exclusively for commercial or industrial use.

2. Permit Required: An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements.

D. Application Requirements: A wireless provider shall provide the following information to the Village, together with the Village's Small Wireless Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:

1. Site specific structural integrity and, for a Municipal 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;

2. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;

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 wireless equipment associated with the small wireless facility;

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

6. Certification that the collocation complies with the collocation requirements and conditions contained herein, to the best of the applicant's knowledge; and

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

8. Certification by a radio engineer that a new, replacement or modified small wireless facility operates within all applicable FCC standards.

E. Application Process: The Village shall process applications as follows:

1. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.

2. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis.

FCC regulation provides that an application to collocate a small wireless facility using an existing structure shall be granted or denied within 60 days of submission of a completed application. Delays beyond that time limit are available only in exceptional circumstances or with the consent of the applicant.

3. An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis after the submission of a completed application.

FCC regulation provides that an application to collocate a small wireless facility using a new structure shall be granted or denied within 90 days of submission of a completed application. Delays beyond that time limit are available only in exceptional circumstances or with the consent of the applicant.

4. The Village shall deny an application which does not meet the requirements of this section. If the Village determines that applicable codes, ordinances or regulations that concern public safety, or the collocation requirements and conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

The Village shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the Village denies an application.

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

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

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

5. Within thirty (30) days after an approved permit to collocate a small wireless facility on a Municipal utility pole, the Village and the applicant shall enter into a Master Pole Attachment Agreement, in a form substantially similar to the Master Pole Attachment Agreement prepared as a model by the Illinois Municipal League (<https://iml.org/file.cfm?key=14148>), as may be subsequently amended and subject to review, revision and approval by the Village Attorney, for the initial collocation on a Municipal utility pole by the application. For subsequent approved permits to collocate a small wireless facility on a Municipal utility pole, the Village and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement. The Village Administrator, or his or her designee, is authorized to execute the Pole Attachment

Agreement on behalf of the Village following review and approval by the Village Attorney of any revisions.

F. Completeness Of Application: Within ten (10) days after receiving an application, the Village shall determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. An application shall be deemed complete if the Village fails to provide notification to the applicant within ten (10) days after all documents, information and fees specifically enumerated in this ordinance are submitted by the applicant to the Village. FCC regulation allows 10 days for determination of completion, and that 10-day time frame replaces the 30-day period provided in the state Act.

Processing deadlines are tolled from the time the Village sends the notice of incompleteness to the time the applicant provides the missing information.

G. Tolling: The time period for applications may be further tolled by:

1. An express written agreement by both the applicant and the Village; or
2. A local, State or Federal disaster declaration or similar emergency that causes the delay.

H. Consolidated Applications: An applicant seeking to collocate small wireless facilities within the jurisdiction of the Village shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to twenty five (25) small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the Village may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The Village may issue separate permits for each collocation that is approved in a consolidated application.

I. Duration Of Permits: The duration of a permit shall be for a period of not less than five (5) years, and the permit shall be renewed for equivalent durations unless the Village makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable Village codes or any provision, condition or requirement contained in this section. If the Act is repealed as provided in section 90 therein, renewals of permits shall be subject to the applicable Village Code provisions or regulations in effect at the time of renewal.

J. Means of Submitting Applications: Applicants shall submit applications, supporting information and notices to the Village by personal delivery at the Village's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

K. Collocation Requirements And Conditions:

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

2. Installation And Maintenance: The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this section. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

3. No Interference With Public Safety Communication Frequencies: The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

4. Utility Pole Restrictions: The wireless provider 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 subparagraph, the terms “communications space”, “communication worker safety zone”, and “electric supply zone” have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

5. Compliance: The wireless provider shall comply with all applicable codes, including acoustic regulations, and local code provisions or regulations that concern public safety.

6. Design Standards: The wireless provider shall comply with the following design standards and any variations from these design standards may only be granted pursuant to the variance provisions of 33.21 of this chapter:

a. Screening: Whenever any equipment or appurtenances are to be installed at grade, screening must be installed to minimize the visibility of the facility and shall not be permitted to obstruct sight lines or to create other traffic or safety problems.

b. Color and Stealth: All wireless facilities subject to this section, including all related equipment and appurtenances, must be a color that blends with the surroundings of the pole, structure tower or infrastructure on which it is mounted. The color must be comprised of nonreflective materials which blend with the materials and colors of the surrounding area and structures. The applicant shall use good faith efforts to employ reasonable stealth techniques to conceal the appearance of the wireless facilities. Any pole extension shall not be metallic or wood and shall blend with the color of the pole upon which they are mounted.

c. Wiring And Cabling: Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the National Electrical Code and National Electrical Safety Code adopted by the Village and in force at the time of the installation of the facility. Any wiring must be covered with an appropriate cover. No wiring and cabling serving the facility will be allowed to interfere with any existing uses.

7. Alternate Placements: Except as provided in this collocation requirements and conditions subsection, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the Village may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within two hundred feet (200') of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the Village, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

8. Height Limitations: The maximum height of a small wireless facility shall be no more than ten feet (10') above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

a. Ten feet (10') in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the Village, that is located within three hundred feet (300') of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the Village, provided the Village may designate which intersecting right-of-way within three hundred feet (300') of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or

b. Fifty feet (50') above ground level. The 50-foot limit provided by FCC regulation replaces the limit of 45 feet under the Act.

9. Height Exceptions or Variances: If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance as provided in section 33.21 of this chapter.

10. Contractual Design Requirements: The wireless provider shall comply with requirements that are imposed by a contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

11. Ground-Mounted Equipment Spacing: Subject to the variance provisions of this article (section 33.21 of this chapter) and State law, the wireless provider shall comply with applicable spacing requirements of this article concerning the location of ground-mounted equipment located in the right-of-way.

12. Undergrounding Regulations: Subject to the variance provisions of this article (section 33.21 of this chapter) and State law, the wireless provider shall comply with the provisions of this article concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval.

13. Collocation Completion Deadline: Collocation for which a permit is granted shall be completed within one hundred eighty (180) days after issuance of the permit, unless the Village and the wireless provider agree to extend this period or a delay is caused by make-ready work for a Municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within sixty (60) days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty (360) days after issuance of the permit. Otherwise, the permit shall be void unless the Village grants an extension in writing to the applicant.

L. Application Fees: Application fees are imposed as follows:

1. Applicant shall pay an application fee of six hundred fifty dollars (\$650.00) for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and three hundred fifty dollars (\$350.00) for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures. The fees established by this ordinance are equal to the limit imposed by the Act and represent a reasonable approximation of the Village's objectively reasonable costs. The Village shall regularly review the fees imposed and may adjust the fees by further amendment to this ordinance.

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

3. Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this section shall be accompanied by the required application fee. Application fees shall be non-refundable.

4. The Village shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:

a. Routine maintenance;

b. The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least ten (10) days prior to the planned replacement and includes equipment specifications and certifications for any of the replacement equipment consistent with the Section titled "Application Requirements"; or

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

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

M. Exceptions to Applicability: Nothing in this section authorizes a person to collocate small wireless facilities on:

1. Property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;

2. Property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or

3. Property owned by a rail carrier registered under section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in section 16-102 of the Illinois Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this section do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of section 16-108.5 of the Illinois Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in section 3-105 of the Illinois Public Utilities Act. Nothing in this section shall be construed to relieve any person from any requirement: 1) to obtain a franchise or a State-issued authorization to offer cable service or video service or 2) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this section.

N. Pre-Existing Agreements: Existing agreements between the Village and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Village utility poles, that are in effect on February 1, 2025, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village before February 1, 2025, subject to applicable termination provisions contained therein and any applicable law. Agreements entered into after February 1, 2025, shall comply with this section.

A wireless provider that has an existing agreement with the Village on the effective date of the Act may accept the rates, fees and terms that the Village makes available under this section for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two (2) or more years after the effective date of the Act by notifying the Village that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the Village's utility poles pursuant to applications submitted to the Village before the wireless provider provides such notice and exercises its option under this paragraph.

O. Annual Recurring Rate: A wireless provider shall pay to the Village an annual recurring rate to collocate a small wireless facility on a Village utility pole located in a right-of-way that equals: 1) two hundred and seventy dollars (\$270.00) per year (which amount may be increased by the Village Administrator in the future to the maximum amount authorized by the Federal Communications Commission in any future ruling, order or guidance authorizing such fee and recurring rates) or 2) the actual, direct and reasonable costs related to the wireless provider's use of space on the Village utility pole.

If the Village has not billed the wireless provider actual and direct costs, the fee shall be two hundred and seventy dollars (\$270.00) (or any amount appropriately increased by the Village Administrator pursuant to this section) payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

P. Abandonment: A small wireless facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within ninety (90) days after receipt of written notice from the Village notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within ninety (90) days of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for Municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

Q. Dispute Resolution: The Circuit Court of McHenry County, Illinois shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on Municipal utility poles within the right-of-way, the Village shall allow the collocating person to collocate on its poles at annual rates of no more than two hundred dollars (\$200.00) per year per Municipal utility pole, with rates to be determined upon final resolution of the dispute.

R. Indemnification: A wireless provider shall indemnify and hold the Village harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Village improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this section and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Village or its employees or agents. A wireless provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

S. Insurance: The wireless provider shall carry, at the wireless provider's own cost and expense such insurance as is required by this Code's provisions for the construction of utilities in the rights-of-way.

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

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

SECTION 5: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Voting Aye: Trustees Foreman, Fouke, Hagen, Klemstein, Letzter and Morris

Voting Nay: None

Abstain: None

Absent: None

APPROVED:



Village President Edwin P. Hettermann



(SEAL)
ATTEST: 
Village Clerk Claudett E. Sofiakis

Passed: January 7, 2025

Approved: January 7, 2025

Published: January 7, 2025

CERTIFICATION

I, CLAUDETT E. SOFIAKIS, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 7th day of January, 2025 the foregoing Ordinance entitled *An Ordinance Amending Chapter 33, Construction of Utility Facilities in the Rights-Of-Way, and Providing for the Regulation of and Application for Small Wireless Facilities and Revising Existing Small Wireless Facilities Deployment Provisions and Revising Annual Recurring Rate Provisions*, was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 2024-25-26, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the 7th day of January, 2025, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Johnsburg, this 7th day of January, 2025.



Claudett E. Sofiakis, Village Clerk
Village of Johnsburg,
McHenry County, Illinois

