

## **ORDINANCE**

**WHEREAS**, the City of Chicago ("City") is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City, acting through its Department of Transportation ("CDOT"), is charged with improving and maintaining City-owned light poles ("City Poles"), Section 2-102-030(q) of the Municipal Code of Chicago ("Code"), and regulating the public way in Chicago, Section 2-102-030(p) of the Code, including with respect to the activities of wireless telecommunications infrastructure providers; and

**WHEREAS**, Chapter 10-29 of the Code, CDOT reviews applications and issues permits for the installation of telecommunications equipment on City Poles; and

**WHEREAS**, wireless telecommunications infrastructure providers are deploying wireless telecommunications equipment and infrastructure as the delivery network for a 5<sup>th</sup> Generation advanced wireless delivery system ("Small Cells") that offer Chicagoans wireless broadband service which is both significantly faster and at the same time higher performing, as measured by latency intervals and other metrics; and

**WHEREAS**, pursuant to Chapter 10-29 of the Code, CDOT has already permitted more than 1,000 Small Cells on City Poles; and

**WHEREAS**, the City has rights as a property owner of the City Poles that are separate from its regulatory authority; and

**WHEREAS**, CDOT wishes to update its procedures to reflect the requirement for execution of a License Agreement for Wireless Installations ("MLA"), attached to this ordinance as Exhibit A, in order to receive regulatory approval to install Small Cells on City Poles; and

**WHEREAS**, in the MLA, the City seeks to distinguish its landlord and regulatory rights to provide a fair and predictable process for the deployment of Small Cells while enabling the City to manage the public way in the overall interests of public health, safety, and welfare; now, therefore,

### **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The above recitals are hereby incorporated by reference as if fully set forth herein.

**SECTION 2.** The CDOT Commissioner is authorized to enter into MLAs with qualified wireless telecommunications infrastructure providers in substantially the form attached hereto as Exhibit A.

**SECTION 3.** The CDOT Commissioner is authorized to make such amendments and modifications to the form of the MLA attached to this ordinance as Exhibit A as the Commissioner may determine to be reasonable or necessary from time to time, including to reflect changes in federal, state, or local laws, statutes, ordinances, executive orders, rules, or regulations; to reflect changes with telecommunications equipment; or so as to promote safety, security, efficiency, or physical integrity with regards to the public way.

**SECTION 4.** The CDOT Commissioner is further authorized to take such actions, including the promulgation of rules, as may be reasonably necessary to promote the fair and safe deployment of wireless service infrastructure.

**SECTION 5.** Chapter 10-29 of the Municipal Code of Chicago is hereby amended by adding the language underscored, and by deleting the language struck through, as follows:

**10-29-010 Definitions.**

“City conduit” shall mean ~~city~~ City-owned conduits suitable for electrical or communications purposes located in the public way or in ~~city~~ City light poles or alley poles.

“City light poles” shall mean ~~city~~ City-owned light poles including, but not limited to, ~~light poles which support traffic signalization equipment referred to as “traffic signal poles”,~~ ordinary light poles and alley poles. “City light poles” shall not include light poles that support traffic signalization equipment.

“Commissioner” shall mean the ~~commissioner of transportation~~ Commissioner of Transportation or the Commissioner’s designee.

“Executive ~~d~~Director” shall mean the ~~executive director of emergency management and communications~~ Executive Director of Emergency Management and Communications, or the Executive Director’s designee.

“Public property” shall mean property owned or controlled by the ~~city~~ City other than the public way, including, but not limited to, ~~city~~ City light poles and conduit.

“Wire” shall mean and shall be deemed to include, but not be limited to, antennas and peripheral transmitters, receivers, repeaters, converters, amplifiers, connectors, fiber optic cables, power supplies, and other related electrical or communications equipment and wiring, but shall not include any wire subject to Chapter 4-280 of the ~~Municipal Code of Chicago.~~

**10-29-020 Permit Authorization required for installation.**

No person or entity shall install any wire, pipe, cable or conduit on, under or over the surface of any public way or public property without first having obtained authorization ~~a permit issued by from the department of transportation~~ Commissioner in the form of a license agreement after consultation with the office of emergency management and communications ~~Office of Emergency Management and Communications.~~ Applications ~~and permits~~ shall be in such form and shall require such plans and specifications as prescribed by the ~~commissioner~~ Commissioner. This chapter shall not apply to the installation or maintenance of telecommunications equipment on, over or under the public way by telecommunications providers as provided in Chapter 10-30, but shall apply to the use of public property by private users.

**10-29-030 Conditions for granting permit entering into a license agreement.**

(a) ~~A permit~~ A license agreement shall only be issued entered into only if the ~~commissioner~~ Commissioner, after consultation with the Executive Director, determines that granting the permit entering into the license agreement and allowing the installation or maintenance of wire, pipe, cable or conduit would: 1) not endanger public health or safety; 2) be

consistent with the sound maintenance and administration of the public way or public property; 3) not constitute undue physical or visual obstruction of the public way or public property; and 4) not overburden the limited capacity of the space on, under or over the surface of the public way or public property. In addition, a permit license agreement shall be issued entered into only if all applicable fees have been paid, all applicable agreements have been executed pursuant to Section 10-29-040, and the applicant provides such surety, insurance, and indemnification as the city City may require.

(b) No person shall attach wires to a City light pole unless that person has written authorization in the form of a licensing agreement with the City to use the City light pole. The Commissioner is authorized to negotiate and execute licensing agreements that authorize and, among other terms and conditions, provide for annual rent for, the use of City light poles.

### **10-29-040 Permit Fee Annual rent.**

(a) For a permit Annual rent shall be paid for the installation or maintenance of wire, cable, pipe or conduit on, under or over the surface of the public way, the applicable fee The annual rent shall provide for recovery of the City's actual costs or a reasonably foreseeable estimate of the City's foreseeable actual costs for maintaining and regulating the public way in a manner consistent with the public welfare and suitable for the use of the applicant. Such costs shall include, but are not be limited to, every expense incurred by the City's in the acquisition, planning, development, and maintenance of the public way and City light pole, including expenses, labor charges, equipment costs, and any additional overhead related to the project such as the costs of inspection, regulation, maintenance, administration, and repair. The Commissioner shall have the authority to determine the applicable permit fee annual rent, which shall be set forth in the license agreement.

~~(b) Notwithstanding subsection (a) of this section, a permit may be issued for the installation or maintenance of wire, cable, pipe or conduit on, under, or over the surface of the public way or public property without payment of the appropriate fee provided for in subsection (a) if: (1) the applicant voluntarily enters into an agreement with the City providing for such use; or (2) the Commissioner requires the applicant to enter into an agreement with the City providing for such use because the Commissioner determines that the proposed use is likely to preclude other persons from using the space, would physically or visually interfere with or obstruct the public way or public property, or because the space is on, over or under public property, over which the City may exercise proprietary powers. The terms of such agreements shall include appropriate compensation to the City and such surety, insurance and indemnification provisions as the City may require. All agreements shall be subject to the approval of the City Council and subject to the approval of the Corporation Counsel as to form and legality; provided that, except as set forth below, no approval by the City Council shall be required for the permitting of wires on or inside of available City light poles (including, subject to the conditions set forth in Section 10-29-060, traffic signal poles) pursuant to regulations issued under Section 10-29-060 for periods not exceeding 20 years (including renewals, which shall contain such conditions as the Commissioner shall apply on a competitively neutral basis) and providing for use fees or permit fees in 2005 and 2006 of not less than (i) \$1,500.00 per year for each permitted use of each City light pole which is not a traffic signal pole and (ii) \$3,000.00 per year for use of each traffic signal pole, in each case of (i) and (ii) adjusted upward in each year commencing on January 1, 2007 for the greater of (x) the CPI Adjustment (as defined below) over a one-year period from a base year of 2006 or (y) a five percent per year increase from the preceding year; provided further that the Commissioner may by regulation adjust use fees or permit fees to account for market conditions, but in no event (except as set forth below) shall~~

~~use fees or permit fees ever be less than the specified amount per year for each category of pole, as applicable, used on an annualized basis. Beginning on the tenth anniversary of the effective date of this ordinance, such fee may be adjusted to add a revenue component or make other reasonable adjustments which are not in excess of prevailing municipal rates; provided that notice of such proposed adjustments is sent to all affected permittees at least one year prior to the implementation date of such adjustments. Such use fees or permit fees shall be applied on a pro rata basis for partial years, may be adjusted to account for multiple attachments to a single City light pole, or size of equipment, or the amount of use of the City light pole and may be established on a calendar year or other 12-month basis as the Commissioner shall determine in regulations. Such regulations may provide for in-kind compensation for a municipal use. The Commissioner may by regulation make adjustments to use fees, establish discounts for advance payments and determine the appropriate application of the proceeds of such payments, and set limits on length or extent of use or set forth other conditions to the extent deemed necessary, with the advice of the Corporation Counsel, to comply with financing or other regulatory restrictions or to reasonably account for the value of in-kind compensation.~~

#### **10-29-050 Effect of chapter on old franchises and permit requirements.**

~~The provisions of this~~ This chapter shall not affect any franchise or similar agreement or permits governing the installation or maintenance of wire, pipe, cable or conduit on, under or over the surface of the public way or public property which may be in effect as of ~~the effective date of this ordinance~~ March 19, 1994, nor permits in effect that were issued prior to January 1, 2025. Upon expiration of any such franchise or other agreement, ~~the provisions of this chapter~~ shall apply. This chapter shall not affect any requirements for permits which the ~~commissioner~~ Commissioner may otherwise require or which may be applicable under ~~the provisions of this Code~~.

#### **10-29-060 Commissioner authorized to establish additional regulations rules.**

The Commissioner is authorized to establish rules as shall be necessary or appropriate to further the purposes of this chapter and to ensure that access to, use or occupancy of space on, under or over the public way or public property is conducted and maintained in a safe and efficient manner consistent with this Code, in a manner so as to not physically or visually interfere with or obstruct the public way or public property, or in a manner that does not overburden the limited capacity of the space. In regard to the use of City light poles, such rules shall be established after consultation with the Executive Director, Commissioner of Fleet and Facility Management, and Commissioner of Streets and Sanitation, and shall be drafted and administered on a competitively neutral and nondiscriminatory basis. Such rules shall additionally take into account, in furtherance of the factors set forth in Section 10-29-030, on a per location basis: (i) public safety and structural limitations, (ii) compatibility of wires, including antennas and other peripheral equipment with the proposed use of City light poles or other City property, (iii) interference with or prevention of current or reasonably anticipated City projects, operations or infrastructure, including communications and information services provided or sponsored by the City, (iv) adequacy of electric service and efficient use of scarce physical space, including potential collocation, (v) regulatory restrictions on the use of such facilities by private parties, (vi) the existence of commercially reasonable alternatives to the use of City light poles (such as existing private utility and telecommunications poles) and (vii) material aesthetic considerations. Preference shall be given to the use of City alley poles over ordinary light poles ~~or traffic signal poles and preference shall be given to ordinary light poles over traffic signal poles~~. Such rules shall not extend to the use of City airport property by private users. ~~Notwithstanding the foregoing, such rules specifically may allow for the use of traffic signal~~

~~poles on a case-by-case basis if such use does not preclude the City from either undertaking its own telecommunications or information projects or permitting similar projects for the benefit of the public even if conducted or operated by third parties.~~ The rules may permit the replacement of City light poles through private donations of similar poles which more readily permit the internal placement of wires so long as such replacement poles and the construction thereof do not require the expenditure of City funds, meet City specifications and regulatory requirements, do not violate any financing requirements and are dedicated to, and become the property of, the City after completion. The Commissioner is authorized to accept any such replacement poles and to issue permits for the use of such replacement poles consistent with the purposes and limitations set forth in this chapter. The rules may also permit the use of available City conduit for wires in the immediate vicinity of or contained within such City light poles for the limited purpose of connection with electric sources of power and communication networks if such connection will avoid construction in and deterioration of the City's public ways; provided, however, that such use of City conduits shall: (a) be limited to the purposes set forth above, (b) be at the prevailing rates of compensation for such use as determined by the Commissioner, (c) not require the expenditure of City funds, (d) not violate any City financing requirements, (e) meet City specifications and regulatory requirements, and (f) become City property after termination of the related permit following default or abandonment. At least 20 days prior to the issuance of any permit for installation of equipment or wires owned by a private party on City light poles, notice shall be given by the Commissioner or Executive Director to the Alderman in whose ward such light poles are located.

#### **10-29-070 Violation – Penalty.**

~~Permit fees Annual rent~~ authorized by this chapter shall constitute a debt due and owing the ~~city~~ City. Any person violating this chapter shall be subject to ~~permit~~ revocation of its ~~licensee agreement~~ and shall also be subject to a fine of not less than \$500.00 and not more than \$2,000.00 for each offense. Each day that such violation continues shall be considered a separate offense. In addition, any wire, pipe, cable or conduit installed, operated or maintained in violation of this chapter may be removed by the ~~city~~ City at the owner's or operator's expense.

**SECTION 6.** This ordinance shall be in full force and effect upon its passage and approval.