

IN THE ZONE

Current Trends in Land Use Law

Are you Ready? Big Changes for Small Cell

By: [Jessica DeWalt](#)

Communities should review and revise their right-of-way and zoning regulations to conform with the recently-adopted Small Wireless Facilities Deployment Act (the "Act"). (P.A. 100-0585, SB 1451). The Act preempts home rule authority and applies to all municipalities, townships, and counties, except Chicago. The Act is effective June 1, 2018 and will sunset on June 1, 2021. The Act's purpose is to assist telecommunications companies in their effort to create stronger wireless coverage in areas of high volume use, particularly as the industry prepares to roll out 5G technologies.

Definitions

As used in the Act, "Small Wireless Facility" means a wireless facility where each antenna is located inside an enclosure that is no bigger than 6 cubic feet in volume and all other wireless equipment attached directly to a utility pole is no more than 25 cubic feet in volume (not including certain ancillary equipment). A "Utility Pole" is a pole or similar structure that is used by a communications service provider or for electric distribution, lighting, traffic control, or a similar function. Finally, the Act applies to both "Wireless Infrastructure Providers" that are defined as companies that build or install wireless communication transmissions equipment but are not a wireless service providers (such as Mobilitie and Crown Castle), as well as "Wireless Service Providers" that are providers of wireless services (such as AT&T and Verizon).



Permitted Use

Under the Act, small wireless facilities would be a "permitted use" and not subject to zoning review as long as they are either situated in the rights-of-way or outside the rights-of-way in property zoned exclusively for commercial or industrial use - not in areas of mixed commercial and residential use. Units of local government cannot require the placement of small wireless facilities on specific poles, but where the applicant seeks to install a new utility pole the authority may offer alternative sites on existing utility poles

within 100 feet of the proposed location. Likewise, local governments can establish a height limitation of 10 feet above the height of existing utility poles. New utility poles may be no taller than 10 feet above the tallest existing utility pole within 300 feet of the proposed location along the same right-of-way. Local governments are only obligated to allow for collocation on their poles located outside a right-of-way if they currently permit access to such poles.

Permit Process & Shot Clock

Applications must be submitted to the local government with full specifications of the installation and must be certified by a licensed engineer as to structural integrity. Units of local government must notify the applicant if the application is incomplete within 30 days of receipt. After the initial 30 days, the unit of local government has 90 days to process an application for small wireless facility located on an existing pole. Local governments have 120 days to approve an application that includes the installation of a new utility pole. If the unit of local government fails to approve or deny the application within the specified time limits, the application is *deemed approved*.

If a unit of government issues a denial for any reason, it must document the basis for the denial with specific citation to the relevant rules and allow the applicant an opportunity to cure deficiencies. Wireless providers must install small wireless facilities within 180 days of approval or the permit will expire.

Wireless providers are able to apply for a single "bulk permit" for up to 25 small wireless facilities if those facilities will be located in the same local government and are substantially the same type of structure. The local government still may treat each application separately and may grant or deny individual sites which are combined in bulk application.

Application Fees

Units of local government are able to charge permit application fees of up to \$650 for a single small wireless facility on an existing utility pole, and up to \$350 for each small wireless facility in a bulk permit application on existing utility poles. Governments may charge a permit application fee of \$1,000 for each small wireless facility that requires the installation of a new utility pole.

Pole Attachment Rates

Where a wireless provider wishes to lease space on a utility pole owned by a local government, the government may charge an annual rental rate of no more than \$200 per pole, per year, or the actual, direct, and reasonable costs related to the wireless provider's use of space on the utility pole.

Additional Provisions

The Act includes provisions for indemnification by the wireless provider as well as mandatory insurance coverage. It does not authorize the collocation of small wireless facilities on property owned by private parties, property owned or controlled by a unit of local government that is not located within the rights-or-way, and property owned, leased, or controlled by a park district. There are provisions requiring adherence to aesthetic and design standards and historic district reviews, as well as provisions for resolving interference with public safety transmissions. Existing agreements between wireless providers and units of local government regarding small wireless facilities in the right-of-way will remain in effect subject to applicable termination provisions.

If you have any questions about the Small Wireless Facilities Deployment Act or would like assistance updating applicable ordinances, please contact your Ancel Glink attorney.



See You at the APA National Conference in New Orleans!

Join Ancel Glink attorney David Silverman on Sunday, April 22 in New Orleans during the APA National Planning Conference for a workshop on Working with Consultants. Learning how to work with consultants by trial and error is frustrating and can lead to problems, disappointments, and failures. If you hire and manage the work of consultants, this session will help you ensure success. Click [HERE](#) for more information.

Later in the evening join Ancel Glink attorney David Silverman and Houseal Lavigne Associates for drinks and appetizers at Acme Oyster House at 7:30pm.

Acme Oyster House
724 Iberville Street
New Orleans, LA 70130



Cases to Know

[Valencia v. City of Springfield](#). The owners of a group home sued the City of Springfield after the City imposed zoning restrictions on family care residences that require a distance of at least 600 feet between these uses. The trial court granted the owners an injunction against the City evicting the residents while the case proceeded and the City appealed. The Seventh Circuit concluded that the request by the owners that the City approve a conditional permitted use to allow their group home was a reasonable request that could support an argument that it was a reasonable accommodation. The injunction was upheld and the case continues.

[Glaser v. City of Chicago](#). An Illinois Appellate Court upheld a zoning board's decision to overturn the zoning administrator's denial of a variance allowing the height of a home to extend four (4) feet beyond the zoning code limits. The court determined that the ZBA's decision granting the variations was appropriate due to the owner's practical difficulties and particular hardships in complying with the zoning code, and that existing conditions were not generally applicable to other properties or created by the owner.

[Mikenas v. Village of Westmont](#). Property owners filed a lawsuit against a municipality six years after the municipality approved a recapture ordinance that imposed recapture fees on future subdivision of their property. Because the case was not filed within the 5 year statute of limitations, the court dismissed the suit and did not address the property owner's claims that the Village did not have authority to adopt the ordinance.

[Fox Valley Families Against Planned Parenthood v. Planned Parenthood of Illinois](#). Almost 10 years ago, Fox Valley Families Against Planned Parenthood filed a lawsuit against Planned Parenthood and others claiming that Planned Parenthood's use of their property violated local zoning. The Appellate Court recently determined that because Planned Parenthood's use fell within the medical clinic category, the zoning challenge was properly dismissed.



Legislation to Love or Loathe

[House Bill 4282](#). This bill would amend the disconnection statute in the Illinois Municipal Code to restrict the ability of property owners to disconnect land that is subject to a TIF redevelopment project area in order to ensure stable property tax revenues to support TIF

redevelopment areas to finance improvements in accordance with a plan.

[House Bill 4247](#). This bill would prohibit a State agency from expending public funds to rent or pay for access to physical space for booths, hospitality suites, or other physical space at a convention or gathering of personnel. If passed, the law will limit important interactions between state agencies and local governments that frequently occur at conferences.

[House Bill 4711](#). This bill would amend the "Adjoining Landowners Act" to make it clear that a property owner cannot bring a lawsuit under that statute against a county, municipality, or township or its officials for any act relating to zoning administration, enforcement, or implementation or any ordinance, resolution, or other zoning regulation, unless the county, municipality, or township is the owner of the property subject to the challenge. This proposed language is consistent with Illinois appellate court interpretations and application of this statute.

[House Bill 5003](#). If passed, this would require the corporate authorities of a municipality to conduct 2 "readings" at least 7 days apart before acting on any ordinance that would place new restrictions on the operation of businesses. This requirement would apply to business licensing, zoning, permitting, environmental, parking, and stormwater regulations, among others. The legislation also requires that any affected person have actual knowledge of the proposed ordinance. No ordinance imposing licensing or permitting requirements on businesses would take effect for 90 days after the ordinance is adopted. The bill preempts home rule authority. Fortunately, this bill seems to be stalled in committee.

For more information visit Ancel Glink's web-site at www.ancelglink.com or email us at inthezone@ancelglink.com. To stay up to date on pending legislation, recent cases, and other topics of interest to local governments, you can also visit our blog [Municipal Minute](#), follow the Land Use Group on Twitter [@AncelGlinkLand](#), or like [Ancel Glink: Land Use](#) on Facebook.

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