

ORDINANCE NO. 12-2018

**AN ORDINANCE AMENDING THE VILLAGE CODE
REGARDING SMALL CELL WIRELESS FACILITIES**

WHEREAS, the Village of Gilberts is an Illinois municipal corporation;

WHEREAS, 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

WHEREAS, the Village is further authorized to adopt the amendments contained in this Ordinance pursuant to its authority to regulate the public right-of-way under section 11-80-1 *et seq.*, of the Illinois Municipal Code; and

WHEREAS, the Village uses the public right-of-way within its Village limits to provide essential public services to its residents and businesses. The public right-of-way within the Village is 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 right-of-way is used, repaired, and maintained in a manner that best serves the public interest; and

WHEREAS, growing demand for personal wireless telecommunications services has resulted in increasing requests nationwide and locally from the wireless industry to place small wireless facilities on Village-owned structures in the public right-of-way. While State and federal law limit the authority of local governments to enact laws that unreasonably discriminate among providers of functionally equivalent services, prohibit, or have the effect of prohibiting the provision of telecommunications services by wireless service providers, the Village is authorized, under existing State and federal law, to enact appropriate regulations and design standards relative to small wireless facility installations in the public right-of-way; and

WHEREAS, in anticipation of continued increased demand for placement of small wireless facility installations within the public right-of-way and in accordance with the Small Wireless Facilities Deployment Act, the Village Board finds that it is in the best interests of the public health, safety and general welfare of the Village to amend its current right of way construction standards in Title 8, Chapter 1 of the Village Code to establish generally applicable standards for the use of such facilities and installations within the public right-of-way in the Village so as to, among other things: (i) preserve the character of the neighborhoods in which small wireless facilities are installed; (ii) minimize any adverse visual impact of small wireless facilities and prevent visual blight in the neighborhoods in which facilities are installed; (iii) codify the application and permitting procedure for the installation of small wireless facilities in the Village; (iv) establish the annual recurring rates for small wireless facilities; and (v) codify the removal, relocation, or modification requirements for small wireless facilities placed in the Village right-of-way, as set forth in this Ordinance.

THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois as follows:

Section 1. Recitals. The recitals are incorporated into this Section 1 as if fully set forth.

Section 2. Amendment. Article C, entitled "Construction of Facilities in Rights of Way," of Chapter 8, entitled "Streets, Sidewalks, and Public Ways, of Title 9, "Building and Construction," of the Gilberts Village Code is deleted in its entirety and replaced with the new Article 8C attached to this Ordinance as Exhibit A.

Section 3. Severability. In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

Section 4. Repeal and Saving Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

Section 5. Effective Date. Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form.

PASSED BY ROLL CALL VOTE OF THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this 17 day of July, 2018.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Dan Corbett	✓	_____	_____	_____
Trustee Elissa Kojzarek	✓	_____	_____	_____
Trustee Nancy Farrell	✓	_____	_____	_____
Trustee Jeanne Allen	✓	_____	_____	_____
Trustee Lou Hacker	✓	_____	_____	_____
Trustee Guy Zambetti	✓	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS 17 DAY OF July, 2018



Village President, Rick Zirk

(SEAL)

ATTEST:


Village Clerk, Courtney Nicholas

Published:

July 20th, 2018

