

**ORDINANCE NO. F-1724**

**AN ORDINANCE AMENDING WHEATON ZONING ORDINANCE, ARTICLE 30, ABOVE  
GROUND SERVICE FACILITIES**

**WHEREAS**, the City of Wheaton, Illinois (“City”) is an Illinois home-rule municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City has the authority to adopt ordinances pertaining to the public health, safety and welfare regulating private and public property; and

**WHEREAS**, the regulation of the ground mounted service facilities is analogous to the regulation of accessory use structures erected on private property and controlled by the Wheaton Zoning Ordinance; and

**WHEREAS**, the City has determined it to be in the best interests of the public health, safety, morals, comfort, convenience and general welfare of the citizens of the City to amend the Wheaton Zoning Ordinance, Article 30, Above Ground Service Facilities to further refine where they may be located; and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Planning and Zoning Board on June 25, 2013 to consider the text amendment request; and the Planning and Zoning Board has recommended that the request shall be granted and approved.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

**Section 1:** The Wheaton Zoning Ordinance text is amended by deleting Article 30.1, 30.3.7, 30.4.1(f), 30.4.2 and 30.5 in their entirety and replacing them with the following:

“30.1 Purpose - The purpose of this Article is to establish general guidelines for the siting of above ground service facilities (“Service Facilities”), as defined herein. The goal of this Article is to encourage the location of Service Facilities in areas that minimize the total number of Service Facilities throughout the community; encourage users of Service Facilities to locate them, to the greatest extent possible, in areas where the adverse impact on the community is minimal; encourage users of Service Facilities to configure them in a manner that minimizes the adverse visual impact; and provide the owners of Service Facilities the ability to provide such services to the community.

30.3.7 Abandonment - In the event the use of any Service Facility has been discontinued for a period of sixty (60) consecutive days, the Service Facility shall be deemed to be abandoned. All notices described herein shall be by regular U.S. mail. An initial determination of the date of abandonment shall be made by the Director of Planning & Economic Development who shall request documentation and/or affidavits from the Service Entity regarding the issue of the Service Facility’s use. Failure of the Service Entity to respond to the Director’s request for information regarding the Service facilities use shall constitute irrefutable evidence of abandonment. Upon the Director’s determination and final written notification to the Service Entity of such abandonment, the Service Entity shall: have an additional sixty (60) days within which to: 1) reactivate the actual use of the Service Facility or transfer the Service Facility to another Service Entity which makes actual use of the Service Facility promptly, or 2) dismantle and remove the Service Facility, and notify the Director in writing of the completion of such removal. If the

Service Entity believes that the final determination of abandonment by the Director is incorrect, it may file a written appeal with the City Manager within five (5) days of the Director's determination. The City Manager shall review the matter, take evidence if deemed necessary, and make a determination of abandonment. The City Manager's determination shall be final. If the Service Entity fails to prevail on appeal, reactivate, transfer to an active user or remove the Service Facility, the City shall have the right to remove or have the Service Facility removed by others. The City shall notify the Service Entity of the impending removal not less than fourteen (14) days prior thereto. The City shall retain the removed Service Facility for fourteen (14) days after its removal unless the City receives written notice from the Service Entity that it does not want the Service Facility stored. The City shall be entitled to the reimbursement of all costs and expenses associated with the removal and storage of the Service Facility. If the Service Facility is not picked up from the City by the Service Entity within twenty eight (28) days of the removal, the City may dispose of the Service Facility in its discretion. The City shall also be entitled to the costs of disposal, or if the Service Facility is sold by the City for scrap or other purpose, the Owner shall be entitled to the sale value less any reimbursement to the City of costs, expenses and storage fees. In addition, an administrative fee shall be assessed against the owner for the disposal of the Service Facility in any manner by the City in an amount equal to the staff time related to the removal. Failure to remove an abandoned Service Facility in conformance with this ordinance shall also be considered a violation of this Code and subject to its general penalty provisions. No permit for any work in the City shall be granted to a Service Entity, including its successors, which owes any sum of money to the City for the City's removal and disposal of an abandoned Service Facility.

30.4.1(f) General - The landscaping requirements of Section 30.6 (3) of this Article shall apply to Service Facilities granted an administrative permit.

30.4.2 Specific Administratively Approved Uses - The following uses shall be approved by the Planning & Economic Development Department after conducting an administrative review unless the Director of Planning & Economic Development concludes that the public interest would be furthered by requiring a special use permit in conformance with Section 30.4.1 e.) of this Article.

- a.) Service Facilities installed within the rear yard in any zoning district provided the Service Facility is set back three feet (3') from the side and three feet (3') from the rear property lines and further provided that:
1. A Service Facility shall not be located within a two hundred and fifty feet (250') radius from any existing or approved Service Facility.
  2. The separation requirement of Section 30.4.2 a.) 1. may be waived by the Director of Planning & Economic Development for the M-1 Manufacturing, C-1, C-2, C-3, C-4, and C-5 Commercial. or O-R Office Research zoning districts provided that the applicant establishes:
    - i. No other site or current technology could be used to provide intended services to the residents of the City; and
    - ii. A denial of a permit for the proposed site would create a gap in providing intended services to the residents of the City.

- iii. If one or more of the foregoing factors do not exist the Director of Planning & Economic Development shall inform the applicant that it may request a Special Use Permit in conformance with Section 30.5 of this Article.
- b.) Service Facilities installed within the side or front yard in any nonresidential district, the R-7 and R-6 districts, and in any residential zoning lot that maintains a nonresidential principal use and/or structure (school, park, or church) and further provided that:
1. The Service Facility is set back three feet (3') from the side property line.
  2. A Service Facility shall not be located within two hundred and fifty feet (250') radius of any existing or approved Service Facility.
- c.) Service Facilities installed within the rear yard extended through the side yard on any corner lot within any zoning district except those lots where the main entrance to the building faces said side yard and further provided that:
1. A Service Facility shall not be located within two hundred fifty feet (250') radius of any existing or approved Service Facility.
  2. The Service Facility is set back three feet (3') from the rear yard property line.

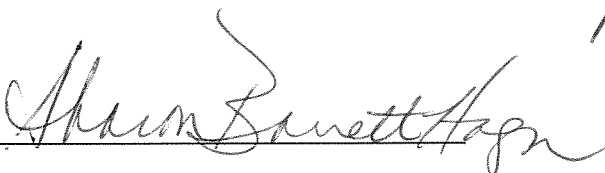
30.5 Prohibited Use - Service Facilities are prohibited in the front yard, corner side yard, except as provided for in Section 30.4.2 c.), or any corner lot where the main entrance to the building faces the side yard of any lot used for residential purposes within the R-1, R-2, R-3, R-4 and R-5 zoning districts.”

**Section 2:** This ordinance shall be cumulative of all provisions of the ordinances of the City of Wheaton, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**Section 3:** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section 4:** This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

  
\_\_\_\_\_  
Mayor

ATTEST:   
\_\_\_\_\_

Roll Call Vote

Ayes: Councilman Sues  
Councilman Saline  
Mayor Gresk  
Councilwoman Pacino Sanguinetti  
Councilman Scalzo

Nays: Councilman Prendiville  
Councilman Rutledge

Absent: None

Passed: August 5, 2013

Published: August 6, 2013