



CITY OF BALLWIN
14811 Manchester Road, Ballwin, MO 63011

BILL NO. 3844

ORDINANCE NO. _____

INTRODUCED BY
ALDERMEN TERBROCK, FINLEY, HARDER, DOGAN, FLEMING, LEAHY, KERLAGON, BOLAND

**AN ORDINANCE ADOPTING A NEW CODE FOR REGULATION OF WIRELESS
COMMUNICATION FACILITIES AND SUPPORT STRUCTURES.**

WHEREAS, the Board of Aldermen recognizes the passage of recent legislation and wishes to bring the Code of Ordinances of the City of Ballwin into conformance with State Law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Chapter 7.6 of the Code of Ordinances of the City of Ballwin shall be repealed in its entirety and replaced with the following:

Sec. 7.6-1. Purposes.

The general purpose of this chapter 7.6 is to regulate the placement and, construction of wireless communications facilities and support structures in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City of Ballwin. Specifically, this section is intended to:

- A. Provide for the appropriate location and deployment of wireless communications infrastructure to serve citizens and businesses in the City of Ballwin and the metropolitan St. Louis area;
- B. Minimize adverse visual impacts of wireless facilities and support structures through careful design, siting, landscape screening and innovative camouflaging techniques;
- C. Ensure that any new support structure is located in an area compatible with the neighborhood or surrounding community to the extent possible;
- D. Comply with applicable law including the Federal Telecommunications Act of 1996, 47 USC 332, and the Missouri Uniform Wireless Communications Infrastructure Deployment Act, 67.5090 et seq RSMo.

Sec. 7.6-2. Definitions.

As used in this chapter, the following terms shall have the meanings and usages indicated:

Accessory equipment: Any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

Antenna (antennae): Communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services. The term shall exclude satellite earth station antennae less than six feet in diameter and any receive-only home television antennae.

AGL: Above ground level. Ground level shall be determined by the average elevation of the natural ground level within a radius of fifty (50) feet from the center location of measurement.

Applicant: Any person engaged in the business of providing wireless communications services or the wireless communications infrastructure required for wireless communications services who submits an application.

Application: A request submitted by an applicant to the City to construct a new wireless support structure, for the substantial modification of a wireless support structure, or for collocation of a wireless facility or replacement of a wireless facility on an existing structure.

Building permit: A permit issued by the City prior to commencement of work on the collocation of wireless facilities on an existing structure, the substantial modification of a wireless support structure, or the commencement of construction of any new wireless support structure, solely to ensure that the work to be performed by the applicant satisfies the applicable building code.

Collocation: The placement or installation of a new wireless facility on a structure that already has an existing wireless facility, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

Director: The City Planner of the City of Ballwin or other designee made by the city administrator.

Disguised support structure: Any free-standing, man-made structure designed for the support of wireless facilities, the presence of which is camouflaged or concealed as an appropriately-placed architectural or natural feature. Such structures may include but are not limited to clock towers, campaniles, free standing bell towers, observation towers, pylon signs, water towers, light standards, flag poles and artificial trees.

Electrical transmission tower: an electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

Equipment compound: an area surrounding or near a wireless support structure within which are located wireless facilities.

Existing structure: a structure that exists at the time a request to place wireless facilities on a structure is filed with an authority. The term includes any structure that is capable of supporting the attachment of wireless facilities in compliance with applicable building codes, National Electric Safety Codes, and recognized industry standards for structural safety, capacity,

reliability, and engineering, including, but not limited to, towers, buildings, and water towers. The term shall not include any utility pole.

FAA: The Federal Aviation Commission.

FCC: The Federal Communications Commission.

Height: The vertical distance measured from the average grade of the base of the structure at ground level to its highest point and including the main structure and all attachments thereto. This is typically expressed as AGL, meaning above ground level.

Replacement: includes constructing a new wireless support structure of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the preexisting wireless facilities or wireless support structure.

Substantial modification: the mounting of a proposed wireless facility on a wireless support structure which, as applied to the structure as it was originally constructed.

(a) Increases the existing vertical height of the structure by:

a. More than ten percent; or

b. The height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty feet or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);

(c) Involves the installation of more than the standard number of new outdoor equipment cabinets for the technology involved, not to exceed four new equipment cabinets; or

(d) Increases the square footage of the existing equipment compound by more than one thousand two hundred fifty square feet.

Utility: any person, corporation, county, municipality acting in its capacity as a utility, municipal utility board, or other entity, or department thereof or entity related thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable television, or telecommunications or internet protocol-related services.

Utility Pole: a structure owned or operated by a utility that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television or electricity, or to provide lighting.

Water tower: a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Wireless communications service: includes the wireless facilities of all services licensed to use radio communications pursuant to Section 301 of the Communications Act of 1934, 47 USC 301.

Wireless facility: the set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, power supplies, cabling and associated equipment necessary to provide wireless communications services;

Wireless support structure: a structure, such as a monopole, tower, or building capable of supporting wireless facilities. This definition does not include utility poles. The term shall not include any support structure including attachments of fifty (50) feet or less in height owned and operated by an amateur radio operator licensed by the Federal Communication Commission

Sec. 7.6-3. General requirements.

The requirements set forth in this section shall be applicable to all wireless facilities and support structures installed, built or modified after the effective date of this ordinance to the full extent permitted by law.

- A. *Principal or incidental use.* Wireless facilities and support structures may be either a principal use in all zoning districts or an incidental use to existing multi-family, institutional or non-residential uses, subject to any applicable district requirement relating to location or setback.
- B. *Building codes and safety standards.* All wireless facilities and support structures shall be constructed and maintained in compliance with all standards contained in applicable state and local building codes, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering. In addition to any other approvals required by this section, no wireless facility or support structure shall be erected prior to the issuance of a building permit.
- (c) *Regulatory compliance.* All wireless facilities and support structures shall meet or exceed current standards and regulations of the FAA, FCC and any other state or federal agency with the authority to regulate such facilities and support structures. Should such standards or regulations be amended, then the owner shall bring such facilities and support structures into compliance with the revised standards or regulations within the time period mandated by the controlling agency.
- (d) *Lighting.* Wireless facilities and support structures shall not be illuminated at night unless required by the FAA or other state or federal agency, in which case a description of the required lighting scheme will be made a part of the application. Accessory equipment may have lighting only as approved by the director on the approved site development plan or by the board of aldermen in the case of a special use exception.
- (e) *Advertising.* Other than a disguised support structure in the form of an otherwise lawfully permitted pylon sign, the placement of advertising on wireless support structures is prohibited.

(f) *Design.*

- (1) Wireless support structures shall maintain a galvanized steel finish or, subject to the requirements of the FAA or any other applicable state or federal agency, be painted a neutral color consistent with the natural or built environment of the site.
- (2) Wireless facilities other than antennae shall have an exterior finish compatible with the natural or built environment of the site and shall also comply with any design guidelines as may be applicable to the particular zoning district in which the facilities are located.
- (3) Antennae attached to a building or a disguised support structure shall be of a color identical to or closely compatible with the surface to which they are mounted.
- (4) Wireless facilities shall be screened by appropriate landscaping and/or fencing. All wireless support structures shall be surrounded by a minimum six-foot high decorative wall constructed of brick, stone or comparable masonry materials and a landscape strip of not less than ten (10) feet in width and planted with materials which will provide a visual barrier to a minimum height of six (6) feet. The landscape strip shall be exterior to any security fencing. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by the director in the case of a permitted use or use permitted by administrative permit, or by the board of aldermen in the case of a special use exception, upon demonstration by the applicant that an equivalent degree of visual screening is achieved.
- (5) All wireless support structures shall be separated from any off-site single or two- family residential structure a distance equal to the height of the support structure plus ten feet. Support structures on parcels adjacent to residentially zoned property shall meet the setbacks of the applicable zoning district as are required for a principal structure along the adjoining property line(s). Where adjacent to nonresidential zoned property, support structures shall meet setbacks as are required for accessory structures. Such structures are defined in the zoning ordinance of the city.
- (6) Ground anchors of all guyed support structures, if permitted, shall be located on the same parcel as the support structure and meet the setbacks of the applicable zoning district.
- (7) Vehicle or outdoor storage on the site of wireless facilities or support structures is prohibited.
- (8) On-site parking for periodic maintenance and service shall be provided at all locations of wireless facilities and support structures as deemed necessary by the director or by the board of aldermen in the case of a special use exception.
- (9) All wiring to or from wireless facilities located more than five (5) feet from the nearest building wall shall be underground.

Sec. 7.6-4. Permitted use.

The placement of the following types of wireless facilities and support structures is permitted in all zoning districts by issuance of a building permit:

- A. Collocation and replacement applications, provided that no permit may be issued for collocation to a certified historic structure as defined in section 253.545 RSMo until at least one public hearing has been held by the Director within 30 days prior to issuance. The Director shall provide public notice of such public hearing in the same manner as required for proposed zoning code changes. Such applications are subject to General Condition 7.6-3(B) of this section, but no other zoning or land use requirements, including design or placement requirements, or public hearing review.
- B. The mounting of wireless facilities on any existing building or structure other than a single-family residence or a building constructed primarily for the support of antenna, provided that the presence of the facilities is concealed by architectural elements or satisfactorily camouflaged by painting a color identical to the surface to which they are attached.
- C. The mounting of antennae on an electrical transmission tower, but not exceeding the height of such tower by more than ten (10) feet.

Sec. 7.6-5. Authorization by administrative permit.

The placement of the following types of wireless facilities and support structures is permitted in all zoning districts by administrative permit approved by the director and issuance of building permits:

- A. The construction of a disguised support structure and related wireless facilities provided that all related equipment shall be placed underground or concealed within the structure when the structure is located in any residential zoning district or the residential portion of any planned zoning district.
- B. Wireless support structures erected and maintained for a period not to exceed thirty (30) calendar days for the purpose of replacement of an existing support structure, testing an existing or proposed network, or special events requiring such temporary facilities.
- C. Application procedures: Applications for administrative permits shall be made on the appropriate forms to the director and accompanied by payment of the established fee.
 - 1. A detailed site plan, based on a closed boundary survey of the host parcel, shall be submitted indicating all existing and proposed improvements including buildings, drives, walkway, parking area and other structures, public rights-of-way, the zoning categories of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the existing or proposed support structure.
 - 2. The application shall be reviewed by the city engineer to determine compliance with the applicable standards, who shall transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facilities and/or support structures.

3. The director shall issue a decision on the permit within applicable time limits. The director may deny the application or approve the application as submitted or with such modifications as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens consistent with the purposes of this section and applicable law. The director may consider the purposes of this section and the factors established herein for granting a special use exception as well as any other considerations consistent with this ordinance and applicable law. A decision to deny an application shall be made in writing, and state the specific reasons for the denial.
- D. Appeals: Appeals from the decision of the director shall be made in the same manner as otherwise provided for the appeal of administrative decisions.
- E. Administrative Permit Fee: A fee of \$1,500.00 shall accompany any application for administrative permit pursuant to this section.

Sec. 7.6-6. Special use exception required.

All applications for wireless facilities and support structures not permitted under section 7.6-4 or 7.6-5 above shall require the approval by special use exception pursuant to the procedures and requirements of Appendix A of the City Code and issuance of building permits.

Applications for a special use exception shall be filed and processed in the manner established in appendix A of the Code of Ordinances of the city (zoning ordinance). A decision by the board of aldermen shall be accompanied by substantial evidence supporting the decision, which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others.

The applicant shall provide an analysis to demonstrate that no existing towers, structures or buildings within the necessary geographic area from the Applicant's tower meet the Applicant's necessary engineering requirements considering: (1) height; (2) structural strength; (3) resulting signal interference; (4) feasibility of retrofitting; (5) feasibility of redesigning the Applicant's tower network; or (6) other limiting conditions that render existing towers, structures or buildings within the Applicant's required geographic area unsuitable.

Sec. 7.6-7. Removal

Any wireless facility or support structure no longer used for its original communications purpose shall be removed at the owner's expense. The owner and applicable co-users shall provide the city with a copy of any notice to the FCC of intent to cease operations and shall have

ninety (90) days from the date of ceasing operations to remove the facility and/or support structure. In the case of co-use, this provision shall not become effective until all users cease operations. Any wireless support structure not in use for a period of one (1) year shall be deemed a public nuisance and may be removed by the city at the owner's expense. Removal of facilities shall not be a condition of approval of any application.

Sec. 7.6-8. Time Limits and Fees.

- A. *Time limits:* All applications regarding wireless facilities and support structures shall be processed in accordance with the time limits established by sections 67.5090 to 67.5103 RSMo.
- B. *Fees:* Fees for applications regarding wireless facilities and support structures shall not exceed the limits established by sections 67.5090 to 67.5103 RSMo.

Sec. 7.6-9. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 2. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this _____ day of _____, 2014.

TIM POGUE, MAYOR

APPROVED this _____ day of _____, 2014.

TIM POGUE, MAYOR

ATTEST:

ROBERT KUNTZ, CITY ADMINISTRATOR