



INTRODUCED BY

ALDERMEN TERBROCK, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

AN ORDINANCE REVISING SECTIONS OF THE CODE OF ORDINANCES
CONCERNING COMMUNICATIONS FACILITIES

WHEREAS, Chapter 7.6 of the City Code of Ordinances establishes provisions regarding wireless communications, and

WHEREAS, changes to the Code are needed because the Missouri Legislature has enacted changes in related statutes (HB 1991 (2018)) and the FCC has issued new regulations, and

WHEREAS, other related sections of the City Code of Ordinances have become outdated and need to be revised or repealed, and

WHEREAS, because these changes in part affect zoning, the Planning and Zoning Commission of the City of Ballwin, Missouri, held a public hearing thereon on the 4th day of February, 2019 beginning at 7:00 p.m., or immediately following the close of the previous public hearing; and

WHEREAS, the Planning and Zoning Commission reviewed and by a unanimous vote recommended approval of these changes at its meeting on the 4th day of February, 2019; and

WHEREAS, notice of said public hearing had previously been published at least 15 days prior to the hearing in the West Newsmagazine, a newspaper of general circulation in the City of Ballwin and otherwise posted and published in accordance with the Zoning Ordinance; and

WHEREAS, all persons who presented themselves desiring to be heard were given an opportunity to be heard and a copy of the proposed ordinance has been made available for public inspection prior to its consideration by the Board of Aldermen; and the Bill was read by title in open meeting as required before final passage by the Board; and

WHEREAS, the Board of Aldermen being fully informed finds that amending the City Code of Ordinances would be in harmony with and bear a substantial relation to the public welfare, health, safety, comfort and convenience of the citizens of the City of Ballwin and in the public interest; and

WHEREAS, the Board of Aldermen has determined that the Code should be revised consistent with such changes in 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, Section 7.6.10, Small Wireless Facility Deployment, is hereby enacted, to read as follows:

Section 7.6.10 Small Wireless Facility Deployment

A. Title and Intent.¹ This Section shall be known and may be cited as the "Small Wireless Facility Deployment Code", and it is intended to encourage and streamline the deployment of small wireless facilities in the City and to help ensure that robust and dependable wireless radio-based communication services and networks are available throughout the City, consistent with state and federal law including sections 67.5110 to 67.5121 RSMo (while in effect) and sections 67.1830 to 67.1846 RSMo. The provisions of Chapter 24, Article IV Right of Way Usage Code, shall apply to small wireless deployments except to the extent inconsistent with this Section 7.6.10.

B. Definitions.² As used in this Section, the following terms shall mean:

- (1) "Antenna", communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;
- (2) "Applicable codes", uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or the City's amendments to such codes enacted to prevent physical property damage or reasonably foreseeable injury to persons to the extent not inconsistent with sections 67.5110 to 67.5121 RSMo (while in effect);
- (3) "Applicant", any person who submits an application and is a wireless provider;
- (4) "Application", a request submitted by an applicant to the City for a permit to collocate small wireless facilities on a utility pole or wireless support structure, or to approve the installation, modification, or replacement of a utility pole;
- (5) "Authority" or "City", the City of Ballwin;
- (6) "Authority pole", a utility pole owned, managed, or operated by or on behalf of the City, but such term shall not include municipal electric utility distribution poles;
- (7) "Authority wireless support structure", a wireless support structure owned, managed, or operated by or on behalf of the City;

¹ See 67.5110 RSMo.

² See 67.5111 RSMo. See also 47 CFR 1.6002.

(8) "Collocate" or "collocation", to install, mount, maintain, modify, operate, or replace small wireless facilities on or immediately adjacent to a wireless support structure or utility pole, provided that the small wireless facility antenna is located on the wireless support structure or utility pole;

(9) "Communications facility", the set of equipment and network components, including wires, cables, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a wireless services provider; to provide communications services, including cable service, as SS SCS HCS HB 1991 7 defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); wireless communications service; or other one-way or two-way communications service;

(10) "Communications service provider", a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless provider;

(11) "Decorative pole", a City pole that is specially designed and placed for aesthetic purposes;

(12) "Fee", a one-time, nonrecurring charge;

(13) "Historic district", a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C, or are otherwise located in a district made subject to special design standards adopted by City ordinance or under state law as of January 1, 2018, or subsequently enacted for new developments;

(14) "Micro wireless facility", a small wireless facility that meets the following qualifications:

(a) Is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height; and

(b) Any exterior antenna no longer than eleven inches;

(15) "Permit", a written authorization required by the City to perform an action or initiate, continue, or complete a project;

(16) "Person", an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including any government authority;

(17) "Rate", a recurring charge;

(18) "Right-of-way", the area on, below, or above a public roadway, highway, street, sidewalk, alley, or similar property used for public travel, but not including a federal interstate highway, railroad right-of-way, or private easement;

(19) "Small wireless facility", a wireless facility that meets both of the following qualifications:

(a) Each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and

(b) All other equipment associated with the wireless facility, whether ground or pole-mounted, is cumulatively no more than twenty-eight cubic feet in volume, provided that no single piece of equipment on the utility pole shall exceed nine cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the small wireless facility.

The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs and related conduit for the connection of power and other services;

(20) "Technically feasible", by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its design or site location can be implemented without a reduction in the functionality of the small wireless facility;

(21) "Utility pole", a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities; provided, however, such term shall not include wireless support structures, electric transmission structures, or breakaway poles owned by the state highways and transportation commission;

(22) "Wireless facility", equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include:

(a) The structure or improvements on, under, or within which the equipment is collocated;

- (b) Coaxial or fiber-optic cable between wireless support structures or utility poles;
 - (c) Coaxial or fiber-optic cable not directly associated with a particular small wireless facility;
 - (d) A wireline backhaul facility;
- (23) "Wireless infrastructure provider", any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment or wireless facilities but that is not a wireless services provider;
- (24) "Wireless provider", a wireless infrastructure provider or a wireless services provider;
- (25) "Wireless services", any services using licensed or unlicensed spectrum, including the use of wifi, whether at a fixed location or mobile, provided to the public using wireless facilities;
- (26) "Wireless services provider", a person who provides wireless services;
- (27) "Wireless support structure", an existing structure, such as a monopole or tower, whether guyed or self-supporting, designed to support or capable of supporting wireless facilities; an existing or proposed billboard; an existing or proposed building; or other existing or proposed structure capable of supporting wireless facilities, other than a structure designed solely for the collocation of small wireless facilities. Such term shall not include a utility pole;
- (28) "Wireline backhaul facility", a physical transmission path, all or part of which is within the right-of-way, used for the transport of communication data by wire from a wireless facility to a network.

C. Deployment of Small Wireless Facilities and Associated Poles in Right-of-Way.³

1. The provisions of this subsection shall only apply to activities of a wireless provider within the right-of-way to deploy small wireless facilities and associated utility poles.

2. Subject to the provisions of this subsection and sections 67.5110 to 67.5121 RSMo (while in effect), a wireless provider may, as a permitted use not subject to zoning review or approval, collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way, except that the placement in the right-of-way of new or modified utility poles in single-family residential zoning districts or areas zoned as historic as of August 28, 2018, shall remain subject to any applicable zoning requirements that are consistent with sections 67.5090 to 67.5103 RSMo., **including but not limited to requirements for underground utilities as set forth in**

³ See 67.5112 RSMo

Appendix A Zoning Code and Chapter 24, Article IV Right of Way Usage Code. In order to maximize compliance with pre-established requirements for placement of utility facilities underground, to the extent that components of small wireless facilities functionally cannot be placed underground in accordance with such requirements they shall instead be installed in the least conspicuous location as reasonably possible under the circumstances as determined by the **Director of Development**. Small wireless facilities collocated outside the right-of-way in property not zoned primarily for single-family residential use shall be classified as permitted uses and not subject to zoning review or approval. Such small wireless facilities and utility poles shall be installed and maintained as not to obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way by the City, other governmental authorities or other authorized right-of-way users.

3. A wireless provider must obtain a permit pursuant to **Chapter 24, Article IV Right of Way Usage Code** with such reasonable conditions as may be imposed by the City, for work in a right-of-way that will involve excavation, affect traffic patterns, obstruct traffic in the right-of-way, or materially impede the use of a sidewalk.

4. Each new, replacement, or modified utility pole installed in the right-of-way shall not exceed the greater of ten feet in height above the tallest existing utility pole in place as of January 1, 2019 located within five hundred feet of the new pole in the same right-of-way, or fifty feet above ground level. New small wireless facilities in the right-of-way shall not extend more than ten feet above an existing utility pole in place as of August 28, 2018, or for small wireless facilities on a new utility pole, above the height permitted for a new utility pole. A new, modified, or replacement utility pole that exceeds these height limits shall be subject to all applicable zoning requirements that apply to other utility poles, including as set forth in **Appendix A Zoning Code and Chapter 24, Article IV Right of Way Usage Code**, to the extent consistent with sections 67.5090 to 67.5103 RSMo.

5. A wireless provider shall be permitted to replace decorative poles when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative pole or poles being replaced, as determined by the **Director of Development**.

6. Subject to subsection D.4 below, and except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. Section 1.1307(a)(4) of the Federal Communications Commission rules, a wireless provider must use appropriate and reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district, as determined by the **Director of Development**. Any such design or concealment measures shall not have the effect of prohibiting any provider's technology, nor shall any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

7. Small wireless facility collocations shall not interfere with or impair the operation of existing utility facilities, or City or third-party attachments. A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and shall return the right-of-way to its functional equivalence before the damage under the competitively neutral, reasonable requirements and specifications of the City. If the wireless provider fails to make the repairs required by the City within a reasonable time after written notice, the City may make those repairs and charge the wireless provider the reasonable, documented cost of such repairs.

D. Permits for Poles in Right of Way and Wireless Facilities in All Locations.⁴

1. The provisions of this subsection shall apply to the permitting of small wireless facilities to be installed by or for a wireless provider in or outside the right-of-way and to the permitting of the installation, modification, and replacement of utility poles by a wireless provider inside the right-of-way.

2. Wireless providers or their agents shall apply for and obtain a permit pursuant to **Chapter 24, Article IV Right of Way Usage Code and this Section** to collocate a small wireless facility or install a new, modified, or replacement utility pole associated with a small wireless facility as provided in subsection C above. The City shall receive applications for, process, and issue such permits subject to the following requirements:

(1) An applicant shall not be required to perform services or provide goods unrelated to the permit, such as in-kind contributions to the City, including reserving fiber, conduit, or pole space for the City;

(2) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant shall include construction and engineering drawings and information demonstrating compliance with the criteria in subdivision (9) of this subsection and an attestation that the small wireless facility complies with the volumetric limitations in subdivision (19) of subsection B above;

(3) An applicant shall not be required to place small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(4) There is no limit as to the placement of small wireless facilities by minimum horizontal separation distances;

(5) An applicant shall comply with reasonable, objective, and cost-effective concealment or safety requirements as provided herein;

⁴ See 67.5113 RSMo

(6) An applicant that is not a wireless services provider shall provide evidence of agreements or plans demonstrating that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless the City and the applicant agree to extend this period or if delay is caused by lack of commercial power or communications transport facilities to the site and the applicant notifies the City thereof. An applicant that is a wireless services provider shall provide the information required by this subdivision by attestation;

(7) Within fifteen (15) days of receiving an application, the City shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the City shall specifically identify the missing information in writing. The processing deadline in subdivision (8) of this subsection shall be tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline may also be tolled by agreement of the applicant and the City;

(8) An application for collocation shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within forty- five (45) days of receipt of the application. An application for installation of a new, modified, or replacement utility pole associated with a small wireless facility shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within sixty (60) days of receipt of the application;

(9) The City may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements in subdivision 3 of subsection C above only if the action proposed in the application could reasonably be expected to:

(a) Materially interfere with the safe operation of traffic control equipment or City-owned communications equipment;

(b) Materially interfere with sight lines or clear zones for transportation, pedestrians, or nonmotorized vehicles;

(c) Materially interfere with compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12213, or similar federal or state standards regarding pedestrian access or movement;

(d) Materially obstruct or hinder the usual travel or public safety on the right-of-way;

(e) Materially obstruct the legal use of the right-of-way by the City, a utility, or other third party;

(f) Fail to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance or regulations promulgated by the state highways and transportation commission that concern the location of ground mounted equipment and new utility poles, subject to wireless provider requests for exception or variance;

(g) Fail to comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;

(h) Fail to comply with the reasonably objective and documented aesthetics of a decorative pole and the applicant does not agree to pay to match the applicable decorative elements; or

(i) Fail to comply with reasonable and nondiscriminatory undergrounding requirements contained in City ordinances as of January 1, 2018, or subsequently enacted for new developments, that require all new utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval, including by wireless provider requests for exception or variance;

(10) The City shall document the complete basis for a denial in writing, and send the documentation to the applicant with the communication denying an application. The applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The City shall approve or deny the revised application within thirty (30) days. Any subsequent review shall be limited to the deficiencies cited in the denial;

(11) (a) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities; provided, however, the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same batch; and

(b) An application may include up to twenty separate small wireless facilities, provided that they are for the same or materially same design of small wireless facility being collocated on the same or materially the same type of utility pole or wireless support structure, and geographically proximate. If the City receives individual applications for approval of more than fifty small wireless facilities or consolidated applications for approval of more than seventy-five small wireless facilities within a fourteen (14) day period, whether from a single applicant or multiple applicants, the City may, upon its own request, obtain an automatic thirty (30) day extension for any additional collocation or replacement or installation application submitted during that fourteen(14)-day period or in the fourteen(14)-day period immediately following the prior fourteen (14) day period. The City shall promptly communicate its request to each affected applicant. In rendering a decision on an application for multiple small wireless facilities, the City may approve the application as to certain individual small wireless facilities while denying it as to

others based on applicable requirements and standards, including those identified in this subsection. The City's denial of any individual small wireless facility or subset of small wireless facilities within an application shall not be a basis to deny the application as a whole; **notwithstanding the foregoing, the FCC “shot clock” review periods set forth in 47 CFR 1.6003 shall not be exceeded regardless of the number of “batched” applications.**

(12) Installation or collocation for which a permit is granted under this subsection shall be completed within one year after the permit issuance date unless the City and the applicant agree to extend this period, or the applicant notifies the City that the delay is caused by a lack of commercial power or communications transport facilities to the site.

(13) Approval of an application authorizes the applicant to:

(a) Undertake the installation or collocation; and

(b) Operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of ten years, which shall be renewed for equivalent durations so long as the facilities and poles remain in compliance with the criteria set forth in subdivision (9) of this subsection, unless the applicant and the City agree to an extension term of less than ten years. The provisions of this paragraph shall be subject to the right of the City to require, upon adequate notice and at the facility owner's own expense, relocation of facilities as may be needed in the interest of public safety and convenience, and the applicant's right to terminate at any time;

(14) Abandoned small wireless facilities shall be removed as provided in **Chapter 24, Article IV Right of Way Usage Code**, or an agreement, as applicable;

(15) In determining whether sufficient capacity exists to accommodate the attachment of a new small wireless facility, the City shall take into account that any grant of access hereunder shall be subject to a reservation to reclaim such space, when and if needed, to meet a core utility purpose or documented plan projected at the time of the application pursuant to a bona fide development plan; and

(16) In emergency circumstances that result from a natural disaster or accident, the City may require the owner or operator of a wireless facility to immediately remove such facility if the wireless facility is obstructing traffic or causing a hazard on the City's roadway. In the event that the owner or operator of the wireless facility is unable to immediately remove the wireless facility, the City may remove the wireless facility from the roadway or other position that renders the wireless facility hazardous. Under these emergency circumstances, the City shall not be liable for any damage caused by removing the wireless facility and may charge the owner or operator of the wireless facility the City's reasonable expenses incurred in removing the wireless facility.

4. A permit is not required for:

- (1) Routine maintenance on previously permitted small wireless facilities;
- (2) The replacement of small wireless facilities with small wireless facilities that are the same or smaller in size, weight, and height; or
- (3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes.

For work described in subdivisions (1) and (2) of this subsection that involves different equipment than that being replaced, the wireless services provider shall submit a description of such new equipment so that the City may maintain an accurate inventory of the small wireless facilities at that location.

5. No approval for the installation, placement, maintenance, or operation of a small wireless facility under this section shall be construed to confer authorization for the provision of cable television service, or installation, placement, maintenance, or operation of a wireline backhaul facility or communications facility, other than a small wireless facility, in the right-of-way.

6. The municipal electric utility shall not require an application for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes.

E. Collocations on City Poles and Wireless Support Structures Outside of Right-of-Way.⁵

1. This subsection only applies to collocations on City poles and wireless support structures that are located outside the right-of-way.

2. Subject to subdivision 3 of this subsection, the City shall authorize the collocation of small wireless facilities on City wireless support structures and poles to the same extent, if any, that it permits access to such structures for other commercial projects or uses. Such collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the City, or its agent, and the wireless provider substantially in the form of **Schedule 1** to this Section.

3. The City shall not enter into an exclusive agreement with a wireless provider concerning City poles or wireless support structures, including stadiums and enclosed arenas, unless the agreement meets the following requirements:

⁵ See 67.5114 RSMo

(1) The wireless provider provides service using a shared network of wireless facilities that it makes available for access by other wireless providers, on reasonable and nondiscriminatory rates and terms that shall include use of the entire shared network, as to itself, an affiliate, or any other entity; or

(2) The wireless provider allows other wireless providers to collocate small wireless facilities, on reasonable and nondiscriminatory rates and terms, as to itself, an affiliate, or any other entity.

4. When determining whether a rate, fee, or term is reasonable and nondiscriminatory for the purposes of this subsection, consideration may be given to any relevant facts, including alternative financial or service remuneration, characteristics of the proposed equipment or installation, structural limitations, or other commercial or unique features or components.

F. Collocations on City Poles Within the Right-of-Way⁶

1. The provisions of this subsection apply to collocations on City poles within the right-of-way by a wireless provider.

2. Neither the City nor any person owning, managing, or controlling City poles in the right-of-way shall enter into an exclusive arrangement with any person for the right to attach to such poles. A person who purchases or otherwise acquires a City pole is subject to the requirements of this subsection.

3. The City shall allow the collocation of small wireless facilities on its poles using the process set forth in subsection D.

4. An application shall include engineering and construction drawings, as well as plans and detailed cost estimates for any make-ready work as needed, for which the applicant shall be solely responsible.

5. Make-ready work shall be addressed as follows, unless the City (or its successor) and applicant agree to different terms in a pole attachment agreement:

(1) The rates, fees, and terms and conditions for the make-ready work to collocate on a City pole shall be nondiscriminatory, competitively neutral, and commercially reasonable, and shall comply with sections 67.5110 to 67.5121 RSMo;

⁶ See 67.5115 RSMo

(2) Unless the City allows the applicant to perform any make-ready work, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within sixty (60) days after receipt of a complete application. If applicable, make-ready work, including any pole replacement, shall be completed by the City within sixty (60) days of written acceptance of the good faith estimate and advance payment by the applicant. The City may require replacement of its pole on a nondiscriminatory basis for reasons of safety and reliability, including a demonstration that the collocation would make the pole structurally unsound, including, but not limited to, if the collocation would cause a utility pole to fail a crash test; and

(3) The person owning, managing, or controlling the City pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance unless the City had determined, prior to the filing of the application, to permanently abandon and not repair or replace the structure. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work, and shall not include third party fees, charges, or expenses, except for amounts charged by licensed contractors actually performing the make-ready work.

6. When a small wireless facility is located in the right-of-way of the state highway system, equipment and facilities directly associated with a particular small wireless facility, including coaxial and fiber optic cable, conduit, and ground mounted equipment, shall remain in the utility corridor except as needed to reach a City or utility pole in the right-of-way but outside the utility corridor in which the small wireless facility is collocated.

G. Rates and Fees.⁷

1. This subsection governs the rates and fees to collocate small wireless facilities on City poles and the rates and fees for the placement of utility poles, but does not limit the City's ability to recover specific removal costs from the attaching wireless provider for abandoned structures. The rates to collocate on City poles shall be nondiscriminatory regardless of the services provided by the collocating applicant.

2. The City shall not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by sections 67.5110 to 67.5121 RSMo (while in effect) for the use and occupancy of a right-of-way, for collocation of small wireless facilities on utility poles in the right-of-way, or for the installation, maintenance, modification, operation, and replacement of utility poles in the right-of-way.

⁷ See 67.5116 RSMo

3. Application fees shall be as follows:

(a) The total fee for any application under subdivision 3 of subsection D for collocation of small wireless facilities on existing City poles shall be one hundred dollars per small wireless facility. An applicant filing a consolidated application under subdivision (11) of subdivision 3 of subsection D shall pay one hundred dollars (\$100.00) per small wireless facility included in the consolidated application; and

(b) The total application fees for the installation, modification, or replacement of a pole and the collocation of an associated small wireless facility shall be five hundred dollars (\$500.00) per pole.

4. (1) The rate for collocation of a small wireless facility to a City pole shall be one hundred fifty dollars (\$150.00) per pole per year.

(2) The City shall not charge a wireless provider any fee, tax other than a tax authorized by subdivision (3) below, or other charge, or require any other form of payment or compensation, to locate a wireless facility or wireless support structure on privately owned property, or on a wireless support structure not owned by the City.

(3) The City shall not demand any fees, rentals, licenses, charges, payments, or assessments from any applicant or wireless provider for, or in any way relating to or arising from, the construction, deployment, installation, mounting, modification, operation, use, replacement, maintenance, or repair of small wireless facilities or utility poles, if not allowed by section 67.5116 RSMo. (while in effect).

H. Authority Preserved.⁸

Subject to the provisions of sections 67.5110 to 67.5121 RSMo (while in effect) and applicable federal law, the City shall continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to wireless support structures and utility poles, except that the City shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes.

⁸ See 67.5118 RSMo

I. Prior Agreements.⁹

This section shall not nullify, modify, amend, or prohibit a mutual agreement between the City and a wireless provider made prior to August 28, 2018, but an agreement that does not fully comply with sections 67.5110 to 67.5121 RSMo (while in effect) shall apply only to small wireless facilities and utility poles that were installed or approved for installation before August 28, 2018, subject to any termination provisions in the agreement. Such an agreement shall not be renewed, extended, or made to apply to any small wireless facility or utility pole installed or approved for installation after August 28, 2018, unless it is modified to fully comply with sections 67.5110 to 67.5121 RSMo (while in effect). In the absence of an agreement, and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and utility poles that become operational or were constructed before August 28, 2018, may remain installed and be operated under the requirements of sections 67.5110 to 67.5121 RSMo (while in effect).

J. Indemnification, Insurance, and Bonding Requirements.¹⁰

1. A wireless provider shall indemnify and hold the City and its elected and appointed officers and employees harmless against any damage or personal injury caused by the negligence of the wireless provider or its employees, agents, or contractors, including but not limited to reasonable attorney's fees incurred by the City.

2. A wireless provider shall have in effect insurance coverage consistent with this subsection, or demonstrate a comparable self-insurance program, all in accordance with **Chapter 24, Article IV, Section 24-82**. A self-insured wireless provider does not need to name the City or its officers and employees as additional insured. A wireless provider shall furnish proof of insurance, if applicable, prior to the effective date of any permit issued for a small wireless facility.

3. The bonding requirements of **Section 24-79** shall apply to small wireless facilities. The purpose of such bonds shall be to:

(1) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines need to be removed to protect public health, safety, or welfare;

(2) Restore the right-of-way in connection with removals under section 67.5113 RSMo;

(3) Recoup rates or fees that have not been paid by a wireless provider in over twelve months, so long as the wireless provider has received reasonable notice from the City of any noncompliance listed above and been given an opportunity to cure;

⁹ See 67.5119 RSMo

¹⁰ See 67.5121 RSMo

(4) Bonding requirements shall not exceed one thousand five hundred dollars per small wireless facility. For wireless providers with multiple small wireless facilities within the City, the total bond amount across all facilities shall not exceed seventy-five thousand dollars, which amount may be combined into one bond instrument.

4. Applicants that have at least twenty-five million dollars in assets in the state and do not have a history of permitting noncompliance within the City shall, under section 67.1830 RSMo, be exempt from the insurance and bonding requirements otherwise authorized by this section.

5. Any contractor, subcontractor, or wireless infrastructure provider shall be under contract with a wireless services provider to perform work in the right-of-way related to small wireless facilities or utility poles, and such entities shall be properly licensed under the laws of the state and all applicable City ordinances. Each contracted entity shall have the same obligations with respect to his or her work as a wireless services provider would have under this Section, under sections 67.5110 to 67.5121 RSMo and other applicable laws if the work were performed by a wireless services provider. The wireless services provider shall be responsible for ensuring that the work of such contracted entities is performed consistently with the wireless services provider's permits and applicable laws relating to the deployment of small wireless facilities and utility poles, and responsible for promptly correcting acts or omissions by such contracted entity.

K. Expiration.¹¹

This Section shall expire at such time that Sections 67.5110 to 67.5122 RSMo expire, except that for small wireless facilities already permitted or collocated on City poles prior to such date, the rate set forth in subsection G for collocation of small wireless facilities on City poles shall remain effective for the duration of the permit authorizing the collocation.

Section 2. The City's schedule of fees shall be revised to add the following fees:

Permit for small wireless pole attachment - \$100.00

Annual rental for attachment to City pole - \$150.00

Permit for new pole for small wireless (includes attachment) - \$500.00

¹¹ See 67.5122 RSMo

Section 3. The first sentence of Code Section 24-78(b)(1) is revised to read as follows:

Except for wireless communications facilities (which are subject to different periods of review)¹², the Director shall promptly review each completed application for a ROW permit and shall grant or deny all such applications as provided herein within thirty-one (31) days of receipt of a completed application.

Section 4. Section 24-81(b) is hereby revised to read as follows:

Payment to city. Any person having facilities within the ROW shall pay to the city monthly compensation consisting of, depending on the facility, linear foot fees and antenna fees as previously set forth in [section 7.5-39](#) for the use of the affected rights-of-way for the applicable facilities which fees remain as follows:

\$5,000.00 for the first mile of linear facilities, or part thereof, plus \$1.90 per linear foot thereafter up to a monthly charge under this subsection of \$30,000.00, and

\$65.00 for each antenna in the rights-of-way, but not less than \$1,000.00.

As provided in Section 67.1846 RSMo., Licensee shall not be obligated to pay such rental fees hereunder if Licensee pays to the City gross receipts taxes, business license fees or business license taxes that are more than nominal and that are imposed specifically on communications related services or equipment.

Section 5. Sections 7.5-31 to 7.5-53 are hereby repealed.

Section 6. If any provision of this Ordinance or the application thereof to anyone or to any circumstance is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby.

¹² Generally: 45 days for collocation or replacement of wireless facilities or non-substantial modifications of existing facilities, 60 days for small wireless facilities on new poles, and 120 days for other (not small) wireless facilities on new poles or substantial modifications of such existing facilities. See Sections 67.5090 et seq and 67.5110 et seq RSMo and 47 CFR 1.40001 and 1.6003. See also City Code Section 7.6.10 (small cell wireless).



Bill No. 4016
Ordinance No. ____

Section 7. This Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED this 11th day of February, 2019.

TIM POGUE, MAYOR

APPROVED this 11th day of February, 2019.

TIM POGUE, MAYOR

ATTEST: _____
CITY CLERK