

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 41-19

AN ORDINANCE

amending Chapter 24 of the City Code to add a new article pertaining to the construction and deployment of small wireless facilities; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. A new Article XI of Chapter 24 of the Code of Ordinances of the City of Columbia, Missouri, is hereby enacted as follows:

ARTICLE XI.

CONSTRUCTION AND DEPLOYMENT OF SMALL WIRELESS FACILITIES

Sec. 24-200. Applicability.

To the extent permitted by law, this article shall apply to all utility providers desiring to construct, operate, or maintain small wireless facilities within the city.

Sec. 24-201. Definitions.

(a) *General.* For the purposes of this section, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number and vice versa, and masculine gender includes the feminine gender and vice versa. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated or contrary to the context, terms, phrases, words, and abbreviations not defined herein shall be given the meaning set forth in section 67.5110-67.5121 RSMo., and if not defined therein, this code, and, if not defined therein, their common and ordinary meaning.

Antenna, communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes. Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes

enacted to prevent physical property damage or reasonably foreseeable injury to persons, including the National Electrical Safety Code (NESC).

Applicable law. State and federal law and regulation applicable to the construction, installation, deployment or collocation of wireless facilities and utility poles, including those laws and regulations of general applicability that do not apply exclusively to wireless facilities or wireless providers such as local ordinances and state law relating to use of right-of-way.

Applicant. Any person or company who submits an application and is a wireless provider.

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.

City utility pole. Means a utility pole, as defined below, owned, managed, or operated by or on behalf of the city; except municipal electric utility distribution poles or facilities which are expressly excluded under state law.

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.

Decorative pole. A city utility pole that is specially designed and placed for aesthetic purposes.

Fee. A one-time, nonrecurring charge.

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 this code or under state law as of January 1, 2018, or subsequently enacted for new developments, and including those areas specifically designated as an HP-O District on the "Official Zoning Map of the City of Columbia, Missouri."

Micro wireless facility. A small wireless facility that meets the following qualifications:

- (1) Is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height; and

- (2) Any exterior antenna no longer than eleven (11) inches.

Small wireless facility permit. A written authorization from a designated city official required by the city to collocate small wireless facilities in or outside the right-of-way, or to install, replace, maintain or operate a utility pole inside the right-of-way for any purpose.

Rate. A recurring charge.

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.

Small wireless facility. A wireless facility that meets both of the following qualifications:

- (1) Each wireless provider's antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and
- (2) All other equipment associated with the wireless facility, whether ground or pole mounted, is cumulatively no more than twenty-eight (28) cubic feet in volume, provided that no single piece of equipment on the utility pole shall exceed nine (9) cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen (15) 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.

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;

Utility pole. A pole or similar structure that is or may be used in whole or in part by or for wireline communications, lighting, traffic control, signage, the collocation of small wireless facilities, or a similar function, or for electric utility distribution, excepting municipal electric utility distribution poles as expressly excluded under state law.

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:

- (1) The structure or improvements on, under, or within which the equipment is collocated;
- (2) Coaxial or fiber-optic cable between wireless support structures or utility poles;
- (3) Coaxial or fiber-optic cable not directly associated with a particular small wireless facility; or
- (4) A wireline backhaul facility.

Wireless infrastructure provider. Any utility provider 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.

Wireless provider. A wireless infrastructure provider or a wireless services provider.

Wireless services. Any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider. A company who provides wireless services.

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.

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.

Sec. 24-202. General standards.

(a) The city shall not enter into an exclusive arrangement with any company for use or management of the right-of-way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, management, or replacement of city utility poles within the right-of-way, or for the right to attach to such city utility poles within the right-of-way.

(b) The city, in applying the provisions of this section, will act in a competitively neutral manner with regard to other users of the right-of-way.

(c) Nothing in this article limits the ability of the city to require an applicant to obtain one or more permits of general applicability that do not apply exclusively to wireless facilities in addition to the permit required by this code in order to collocate a small wireless facility or install a new, modified, or replacement utility pole associated with a small wireless facility.

(d) The city may require a permit under applicable codes, existing city ordinances, or this article, with reasonable conditions, 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.

(e) A small wireless facility must comply with reasonable, objective, and cost-effective concealment or safety requirements determined by the city as well as city aesthetic standards, including using equipment as close in color to the pole as possible.

(f) Subject to section 24-203(h), 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, the city may require reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures for small wireless facilities or utility poles placed in a historic district or areas specifically designated as an HP-O District on the "Official Zoning Map of the City of Columbia, Missouri." Any such design or concealment measures shall not have the effect of prohibiting any wireless 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.

(g) Right-of-way users, upon adequate notice and at the facility owner's own expense, shall relocate facilities as may be needed in the interest of public safety and convenience.

(h) Except as otherwise provided in this code and applicable law, in reviewing applications for small wireless facilities, wireless support structures and utility poles, the city will exercise zoning, land use, planning, and permitting authority within its territorial boundaries.

(i) Nothing in this article shall be interpreted to impose any new requirements on cable providers for the provision of such service.

(j) Small wireless facilities or utility poles constructed or operational before August 28, 2018, which were approved by the city by permit or agreement may remain installed and be operated under the requirements of this article.

(k) Although municipal electric utility distribution poles or facilities are expressing excluded from sections 67.5110 – 67.5121 RSMo., city shall reserve the right and authority to contract for attachment to city-owned electric utility distribution poles.

Sec. 24-203. Permitting provisions.

(a) *Permit requirements – inside the right-of-way.* Any company desiring to collocate small wireless facilities, or to install, replace, maintain or operate a utility pole, inside the right-of-way must first apply for and obtain a permit, in addition to any other required permit, license, or authorization that is generally applicable and does not apply exclusively to wireless facilities.

- (1) The collocation of small wireless facilities and the installation, maintenance, modification, operation, and replacement of utility poles along, across, upon, and under the right-of-way is not subject to zoning review or approval; except that the placement of new or modified utility poles in the right-of-way in areas zoned single-family residential or as historic as of August 28, 2018, remain subject to any applicable zoning requirements that are consistent with sections 67.5090 to 67.5103, RSMo.
- (2) Small wireless facilities and utility poles shall be installed and maintained so as not to obstruct or hinder the usual travel, including pedestrian travel, or public safety on the right-of-way or obstruct the legal use of the right-of-way by the city or other authorized right-of-way users.
- (3) A new, replacement, or modified utility pole installed in the right-of-way shall not be subject to zoning requirements so long as the utility pole does not exceed the greater of ten (10) feet in height above the tallest existing utility pole in place as of January 1, 2019 located within five hundred (500) feet of the new utility pole in the same right-of-way, or fifty feet (50) above ground level. A new, modified, or replacement utility pole that exceeds these height limits shall be subject to applicable city zoning requirements that apply to other utility poles, and that are consistent with sections 67.5090 to 67.5103, RSMo.
- (4) New small wireless facilities in the right-of-way shall not extend more than ten (10) feet above an existing utility pole in place as of August 28, 2018.
- (5) Small wireless facilities on a new utility pole shall not extend above the height permitted for a new utility pole in subsection 3 above.
- (6) 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. The term “reasonably conform” as used herein, shall mean that the design aesthetics of the replacement pole shall be as nearly

identical to the decorative pole replaced as is feasible. The director of public works or other designee is authorized to determine if the replacement pole reasonably conforms, based upon the reasonable objective design standards of the City.

- (7) The city may require replacement of a city utility pole that is proposed to be used for a collocation on a nondiscriminatory basis for reasons of safety and reliability, including a demonstration that the collocation would make the city utility pole structurally unsound.

(b) *Permit requirements – outside the right-of-way.*

- (1) The collocation of small wireless facilities in or on property not zoned primarily for single-family residential use is not subject to zoning review or approval.

- (2) The city will allow collocation of small wireless facilities on city wireless support structures and city utility poles that are located on city property outside the right-of-way to the same extent, if any, that it allows access to such structures for other commercial projects or uses. Any such collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the city and the wireless provider, and not otherwise governed by this code.

- (3) The city shall not enter into an exclusive agreement with a wireless provider concerning city utility poles or city wireless support structures that are located on city property outside the right-of-way, including stadiums and enclosed arenas, unless the agreement meets the following requirements:

- a. 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

- b. 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.

(c) *Permit process.* The permit process for an applicant seeking to construct small wireless facilities in or outside the right-of-way, or to install, replace, maintain or operate a utility pole inside the right-of-way shall be as follows:

- (1) An applicant seeking to collocate small wireless facilities in or outside the right-of-way, or to install, replace, maintain or operate a utility pole inside the right-of-way, must first submit an application for a permit to the director of

public works or the director's designee. The director of public works or the director's designee shall design and make available to applicants a standard application form, consistent with the provisions of this article which all applicants must use in order to accomplish the purposes of this article. Except for the requirements in subsection 2(b) below, an applicant shall not be required to provide more information to obtain a permit under this article than other communications service providers that are not wireless providers.

- (2) An application for a permit shall include the following:
- a. Construction and engineering drawings which demonstrate compliance with the criteria in section 4(f);
 - b. An attestation that the small wireless facilities comply with the volumetric limitations in the definition of small wireless facility;
 - c. Information on the height of any new, replacement, or modified utility pole;
 - d. Applicable indemnity, insurance, performance bond information required in section 24-205;
 - e. An applicant that is not a wireless services provider must provide evidence of agreements or plans demonstrating that the small wireless facilities will be operational for use by a wireless services provider within one (1) year after the permit issuance date, unless the city and the applicant agree to extend this period or if the applicant notifies the city the delay is caused by lack of commercial power or communications transport facilities. An applicant that is a wireless services provider must provide this information by attestation;
 - f. Plans and detailed cost estimates for any make-ready work as needed; the applicant shall be solely responsible for the cost of any make-ready work;
 - g. Projected commencement and termination dates for the permit, or if such dates are unknown at the time the permit is issued, a provision requiring the permit holder to provide the director of public works or the director's designee with reasonable advance notice of such dates once they are determined; and
 - h. An application for electric service, if required.

(d) *Fees and rates.* Each such Application shall be accompanied by payment of fees as designated in this article.

- (1) *General.*
 - a. The city may not require or accept in-kind services in lieu of any fee.
 - b. The rates to collocate on city utility poles shall be nondiscriminatory.
- (2) *Application fee.*
 - a. The total fee for an application for the collocation of a small wireless facility on an existing city utility pole is one hundred dollars (\$100.00) per small wireless facility.
 - b. An applicant filing a consolidated application shall pay one hundred dollars (\$100.00) per small wireless facility included in the consolidated application.
 - c. The total fee for an application for the installation, modification, or replacement of a utility pole together with the collocation of an associated small wireless facility is five hundred dollars (\$500.00) per utility pole.
- (3) *Collocation rate.*
 - a. The rate for collocation of a small wireless facility to a city utility pole is one hundred fifty dollars (\$150.00) per city utility pole per year.
- (4) *Right-of-way permit fee.*
 - a. The total fee for a right-of-way permit associated with the installation of small wireless facilities in the right-of-way is fifty dollars (\$50.00).
- (e) *Timing for processing of an application.*
 - (1) 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 set out in (e)(2) of this subsection is 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.
 - (2) The city shall process and approve or deny an application for collocation of a small wireless facility within forty-five (45) days of receipt of the application. The application shall be deemed approved if not approved or denied within this forty-five (45) day period.

- (3) The city shall process and approve or deny an application for installation of a new, modified, or replacement utility pole associated with a small wireless facility within sixty (60) days of receipt of the application.
- (4) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.
 - a. An application may include up to twenty (20) separate small wireless facilities; provided that the application is 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. The application shall provide information sufficient for the director of public works or the director's designee to determine whether the applicant has met the requirements of this subsection. The director of public works or the director's designee shall have discretion to determine whether the application meets the requirements of this subsection.
 - b. If the city receives individual applications for approval of more than fifty (50) small wireless facilities or consolidated applications for approval of more than seventy-five (75) 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 day period immediately following the prior fourteen (14) day period. The city will promptly communicate its request to each and any affected applicant.
 - c. The denial of one or more small wireless facilities in a consolidated application shall not delay processing or constitute a basis for denial of any other small wireless facilities in the same consolidated application or the consolidated application as a whole.
- (5) The city shall provide a good faith estimate for any make-ready work necessary to enable a city utility 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. Make-ready work, including any pole replacement, shall be completed within sixty (60) days of written acceptance of the good faith estimate and advance payment, if required, by the applicant.
- (6) For any application denied:

- a. The city shall document the complete basis for a denial in writing, and send the documentation to the applicant on the day the city denies the application.
 - b. 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.
 - c. 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.
- (7) The city will not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities.
- a. If doing so would be consistent with 47 U.S.C. § 253(a), particularly as interpreted by the Federal Communications Commission’s declaratory ruling adopted on August 2, 2018 (FCC 18-111), the city may institute a temporary moratorium on applications for small wireless facilities and the collocation thereof for no more than thirty (30) days in the event of a major and protracted staffing shortage that reduces the number of personnel necessary to receive, review, process, and approve or deny applications for the collocation of small wireless facilities by more than fifty (50) percent.
- (f) *Denial of an application.* An application for a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole otherwise meeting the requirements of sections 24-203(a)(1) or 24-203(b)(1) may be denied if the action proposed in the application could reasonably be expected to:
- (1) Materially interfere with the safe operation of traffic control equipment or city-owned communications equipment;
 - (2) Materially interfere with sight lines or clear zones for transportation, pedestrians, or non-motorized vehicles;
 - (3) Materially interfere with compliance with the Americans with Disabilities Act, or similar federal or state standards regarding pedestrian access or movement;
 - (4) Materially obstruct or hinder the usual travel or public safety on the right-of-way;

- (5) Materially obstruct the legal use of the right-of-way by the city, utility, or other third party;
- (6) Fail to comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;
- (7) 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;
- (8) Fail to comply with city's written policy or code requirements for undergrounding, or subsequently enacted for new developments, that require all 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; or
- (9) Any other reason not prohibited by applicable law.
- (g) *Approval of an application.*
- (1) The director of public works or the director's designee shall review each application for a permit and, upon determining that:
 - a. The applicant has submitted all necessary information;
 - b. There is no basis under section 24-203(g) to deny the application; and
 - c. The applicant has paid the appropriate fee

the director of public works or the director's designee shall issue the permit.
- (2) If the city approves an application, the applicant is authorized to:
 - a. Undertake the installation or collocation;
 - b. Operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of not less than ten (10) years, which shall be renewed for equivalent durations so long as they are in compliance with the criteria listed in section 24-203(f) and current on all fees due the city.
- (3) The city may approve a permit subject to a reservation to reclaim space on the utility pole, when and if needed, to meet the utility pole owner's core utility purpose or a documented city plan projected at the time of the application.

- (h) *No application required.* No application is 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.

A person performing the permitted acts under this subsection may be required to provide the city with a description of any new equipment installed so that the city may maintain an accurate inventory of the small wireless facilities at a particular location. And provider shall immediately inform the city when a pole or pole attachment is no longer in use.

Sec. 24-204. Construction standards.

(a) The construction, operation, maintenance, and repair of small wireless facilities shall be in accordance with all applicable codes, including the National Electrical Safety Code (NESC), and relevant city ordinances pertaining to construction, operation, maintenance, and repair inside or outside the right-of-way.

(b) All small wireless facilities shall be installed and located with due regard for minimizing interference with the public and with other users of a right-of-way, including the city.

(c) An applicant shall not place small wireless facilities where they will damage or interfere with the use or operation of previously installed facilities, or obstruct or hinder the various utilities serving the residents and businesses in the city of their use of any right-of-way.

(d) Any and all rights-of-way disturbed or damaged during the construction of small wireless facilities shall be promptly repaired or replaced by the applicant to its functional equivalence as existed before the disturbance or damage.

(e) Any wireless infrastructure provider, contractor or subcontractor must be properly licensed under laws of the state and all applicable local ordinances and shall provide such necessary proof upon request by the city.

(f) Each wireless infrastructure provider, contractor or subcontractor shall have the same obligations with respect to its work as wireless services provider would have hereunder and applicable law if the work were performed by the wireless services provider. The wireless services provider shall be responsible for ensuring that the work of wireless infrastructure providers, contractors or subcontractors is performed consistent with their

permits and applicable law, and shall be responsible for promptly correcting any acts or omissions by a wireless infrastructure provider, contractor or subcontractor.

(g) All equipment, attachments and poles installed shall bear clear signage of ownership and shall include an emergency contact phone number.

Sec. 24-205. Indemnity, insurance, performance bonds.

(a) *Indemnity.*

(1) Wireless providers shall indemnify and hold the city, its officers and employees harmless against any damage or personal injury caused by the negligence of the wireless provider or its employees, agents, or contractors.

(b) *Insurance.* Except as provided in this section, each small cell wireless provider shall provide, at its sole expense, and maintain during the term of an agreement or franchise, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the city, with a rating by Best of not less than "A," that shall protect the small cell wireless provider, the city, and the city's officials, officers, and employees from claims which may arise from operations under an agreement or franchise, whether such operations are by the small cell wireless provider, its officers, directors, employees and agents, or any subcontractors of the small cell wireless provider. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all small cell wireless provider operations, products, services or use of automobiles, or construction equipment. The amount of insurance for Single Limit Coverage applying to Bodily and Personal Injury and Property Damage shall be at least \$3,000,000.00, but in no event less than the individual and combined sovereign immunity limits established by RSMo. § 537.610 for political subdivisions; provided that nothing herein shall be deemed to waive the city's sovereign immunity. An endorsement shall be provided which states that the city is listed as an additional insured and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days' advance written notice of such event being given to the director of public works. If the person is self-insured, it shall provide the city proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The insurance requirements in this section or otherwise shall not apply to a small cell wireless provider to the extent and for such period during an agreement or franchise as ROW-user is exempted from such requirements pursuant to RSMo. § 67.1830(6)(a) and has on file with the director an affidavit certifying that small cell wireless provider has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by agreement or franchise. The city reserves the right to waive any and all requirements under this section when deemed to be in the public interest.

(1) As part of the permit process, a wireless provider must provide proof of liability insurance coverage against any damage or personal injury caused by

the negligence of the wireless provider or its employees, agents, or contractors. The wireless provider's liability insurance policy must name the city or its officers and employees as additional insureds.

- (2) In the alternative, a wireless provider must demonstrate to the satisfaction of the city that it has in effect a comparable self-insurance program in amounts as required by city.
- (c) *Performance bond.*
 - (1) As part of the permit process, a wireless provider must post a performance bond of one hundred fifty dollars (\$150.00) per small wireless facility, not to exceed a total of seventy-five thousand dollars (\$75,000.00).
 - (2) The purpose of the performance bond is to:
 - a. Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that the city determines need to be removed to protect public health, safety, or welfare;
 - b. Restore the right-of-way in connection with removals of small wireless facilities from the right-of-way; and
 - c. Recoup rates or fees that have not been paid by a wireless provider in over twelve (12) months, provided the wireless provider has been provided with reasonable notice from the city and has been given the opportunity to cure.
 - (3) Upon completion of the work associated with the small wireless facilities covered by the performance bond to the satisfaction of the director of public works or the director's designee, the director of public works or the director's designee shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established by the director of public works or the director's designee considering the nature of the work performed.
 - (4) Recovery by the city of any amounts under the performance bond or otherwise does not limit an applicant's duty to indemnify the city in any way, nor shall such recovery relieve an applicant of its obligations under a permit or reduce the amounts owed to the city other than by the amounts recovered by the city under the performance bond, or in any respect prevent the city from exercising any other right or remedy it may have.

(d) *Exemption.*

- (1) Applicants that have at least twenty-five million dollars (\$25,000,000.00) in assets in the state and do not have a history of permitting noncompliance within the city's jurisdiction shall be exempt from the insurance and bonding requirements otherwise required by this section. The city may require an applicant to provide proof by affidavit that its assets meet or exceed this requirement at the time of filing the application.

Sec. 24-206. Miscellaneous provisions.

(a) *Compliance with laws.* Each applicant shall comply with all applicable city ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established, to the extent that they are consistent with state and federal law.

(b) *Franchises not superseded.* Nothing herein shall be deemed to relieve an applicant of the provisions of an existing franchise, license or other agreement or permit.

(c) *Rights and remedies.*

- (1) The exercise of one remedy under this article shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an applicant of its obligations to comply with its permits. Remedies may be used alone or in combination; in addition, the city may exercise any rights it has at law or equity.
- (2) The city hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provisions of this article.
- (3) No applicant shall be relieved of its obligation to comply with any of the provisions of this article by reason of any failure of the city to enforce prompt compliance.

(d) *Incorporation by reference.* Any permit granted pursuant to this article shall by implication include a provision that shall incorporate by reference this article into such permit as fully as if copied therein verbatim.

(e) *Calculation of time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this article or any permit, and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

(f) *Severability.* If any term, condition, or provision of this article shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision that has been held invalid is no longer invalid, said

provisions shall there upon return to full force and effect without further action by the city and shall thereafter be binding on the applicant and the city.

Sec. 24-207. Annexation.

The provisions hereof shall specifically apply to any lands or property annexed as the date of such annexation.

Sec. 24-208. Relocation of facilities.

Whenever, by reason of changes in the grade or widening of a street or in the location or manner of constructing a water pipe, drainage channel, sewer, or other city-owned underground or above ground structure, it is deemed necessary by the city, in the interest of public safety and convenience, to move, alter, or change the location of underground or above ground facilities of a wireless provider, the wireless provider shall relocate such facilities, on alternative right-of-way provided by the city, if available, upon adequate notice in writing by the city, without claim for reimbursement or damages against the city.

Sec. 24-209. Standards applicable to city.

Any standards in this article relating to small wireless facilities shall be fully applicable to work performed by the city and its departments.

Sec. 24-210. Savings clause.

Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplement or otherwise nullify any other ordinances of the city or requirements thereof, whether or not relating to or in any manner connected with the subject written hereof, unless expressly provided otherwise herein or hereafter.

Sec. 24-211. Prior agreements.

This article shall not nullify, amend or prohibit any mutual written agreements between the city and a wireless provider entered into prior to January 1, 2019, which shall remain in effect unless otherwise expressly prohibited by state or federal law.

Sec. 24-212. Authority preserved.

Subject to provisions of sections 67.5110 through section 67.5121 RSMo. while in effect, and applicable federal law the city shall continue to preserve and exercise all powers of zoning, land use, planning, aesthetic preservation, protection of public health and safety, and exercise of permitting authority within its boundaries including with respect to wireless support structures and utility poles unless specifically barred by state statute or federal law.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2019.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor