

ORDINANCE 70892

BOARD BILL NO 173CS SPONSORED BY ALDERMAN TOM OLDENBURG/PRE REED/ALDERMAN JACK COATAR/ALDERMAN J. BOYD/ALDERWOMAN BETH MURPHY/ALDERWOMAN HOWARD

1 An Ordinance creating a New Chapter under Title 23 of the Revised Code of the City
2 of St. Louis, titled Small Wireless Facilities and pertaining to the establishment of procedures
3 and requirements relating to the [~~construction~~] collocation and deployment of Small Wireless
4 Facilities in the right-of-way and city property; to be codified as chapter 23.59 of the
5 revised code of the city of St. Louis; containing a severability clause, savings clause and an
6 emergency clause.

7 **WHEREAS**, the City has previously regulated the [~~construction~~] Collocation and
8 deployment of Small Wireless Facilities through a variety of ordinances and practices; and

9 **WHEREAS**, the General Assembly of the State of Missouri determined that policies
10 intended to encourage and streamline the deployment of Small Wireless Facilities and to help
11 ensure that robust and dependable wireless radio-based communication services and networks
12 are available throughout the State of Missouri is a matter of legitimate statewide concern; and

13 **WHEREAS**, in HB 1991 (sections 67.5110 to 67.5121, RSMo.) (the “Uniform Small
14 Wireless Facility Deployment Act” or the “Act”), the General Assembly adopted a uniform
15 statewide framework for the deployment of Small Wireless Facilities and utility poles in the
16 State of Missouri; and

17 **WHEREAS**, in the Act, the General Assembly directs an Authority, defined to
18 include a Missouri municipality, to adopt an ordinance or develop an agreement that makes
19 available to wireless providers rates, fees and other terms that comply with the provisions of
20 the Act.

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1 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

2 **SECTION ONE.** Applicability.

3 To the extent permitted by law, this Chapter shall apply to all Persons desiring to construct,
4 operate, or maintain Small Wireless Facilities within the City.

5 **SECTION TWO.** Definitions.

6 A. Definitions and Usage-General

7 For the purposes of this Chapter, the following terms, phrases, words, and
8 abbreviations shall have the meanings given herein, unless otherwise expressly
9 stated. When not inconsistent with the context, words used in the present tense
10 include the future tense and vice versa, words in the plural number include the
11 singular number and vice versa, and masculine gender includes the feminine
12 gender and vice versa. The words “shall” and “will” are mandatory, and “may” is
13 permissive. Unless otherwise expressly stated or contrary to the context, those
14 terms, phrases, words, and abbreviations not defined herein shall be given the
15 meaning set forth in Sections 67.5110-67.5121, RSMo., and if not defined therein,
16 the City Code, and, if not defined therein, their common and ordinary meaning.
17 For further convenience, the first letter of terms, phrases, words and abbreviations
18 defined in this Chapter have been capitalized, but an inadvertent failure to
19 capitalize such letter shall not affect its meaning, nor shall the inadvertent

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1 capitalization of the first letter of a term, phrase, word, or abbreviation not defined
2 herein affect the meaning thereof.

3 B. “Antenna”, communications equipment that transmits or receives electromagnetic
4 radio frequency signals used in the provision of wireless services;

5 C. “Applicable Codes”, include [~~City Right-of-Way codes generally applicable to~~
6 ~~all users of the Right-of-Way and~~] any City codes incorporating uniform
7 building, fire, electrical, plumbing, or mechanical codes adopted by a recognized
8 national code organization or local amendments to such codes enacted to prevent
9 physical property damage or reasonably foreseeable injury to persons;

10 D. “Applicant”, any person who submits an application and is a Wireless Provider;

11 E. “Application”, a request submitted by an applicant to the City for a permit to
12 Collocate Small Wireless Facilities on a Utility Pole or Wireless Support
13 Structure, or to approve the installation, modification or replacement of a Utility
14 Pole;

15 F. “City Utility Pole”, means a Utility Pole, as defined below, owned, managed or
16 operated by or on behalf of the City; except municipal electric utility distribution
17 poles or facilities;

18 G. “Collocate” or “Collocation”, to install, mount, maintain, modify, operate, or
19 replace Small Wireless Facilities on or immediately adjacent to a Wireless Support

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1 Structure or Utility Pole, provided that the Small Wireless Facility Antenna is
2 located on the Wireless Support Structure or Utility Pole;

3 H. “Communications Facility”, the set of equipment and network components,
4 including wires, cables, and associated facilities used by a cable operator, as
5 defined in 47 U.S.C. Section 522(5); a telecommunications carrier, as defined in
6 47 U.S.C. Section 153(51); a provider of information service, as defined in 47
7 U.S.C. Section 153(24); or a Wireless Services Provider; to provide
8 communications services, including cable service, as ~~[SS SCS HCS HB 19917]~~
9 defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47
10 U.S.C. Section 153(53); and information service, as defined in 47 U.S.C. Section
11 153(24); Wireless Communications Service; or other one-way or two-way
12 communications service;

13 I. “Communications Service Provider”, a cable operator, as defined in 47 U.S.C.
14 Section 522(5); a provider of information service, as defined in 47 U.S.C. Section
15 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 152(51); or
16 a wireless provider;

17 J. “Decorative Pole”, a City Utility Pole that is specially designed and placed for
18 aesthetic purposes;

19 K. “Fee”, a one-time, nonrecurring charge;

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- 1 L. “Historic District”, a group of buildings, properties, or sites that are either listed in
2 the National Register of Historic Places or formally determined eligible for listing
3 by the Keeper of the National Register, the individual who has been delegated the
4 authority by the federal agency to list properties and determine their eligibility for
5 the National Register, in accordance with Section VI. D. 1. A. i-v of the
6 Nationwide Programmatic Agreement codified at 47 C.F.R., Part 1, Appendix C,
7 or are otherwise located in a district made subject to special design standards
8 adopted by City ordinance or under state law as of January 1, 2018, or
9 subsequently enacted for new developments;
- 10 M. “Permit”, a written authorization from a designated City official required by the
11 City to deploy or ~~construct~~ **Collocate** Small Wireless Facilities in or outside the
12 Right-of Way, or to install, replace, maintain or operate a Utility Pole inside the
13 Right-of Way;
- 14 N. “Person”, an individual, corporation, limited liability company, partnership,
15 association, trust, or other entity ~~of~~ **or organization**, including an authority;
- 16 O. “Rate”, a recurring charge;
- 17 P. “Right- of- Way”, the area on, below, or above a public roadway, highway, street,
18 sidewalk, alley, or similar property used for public travel, but not including a
19 federal interstate highway, railroad right-of-way or private easement;

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1 Q. “Small Wireless Facility”, a wireless facility that meets both of the following
2 qualifications:

- 3 1. Each Wireless Provider’s antenna could fit within an enclosure of no more
4 than six cubic feet in volume; and
- 5 2. All other equipment associated with the Wireless Facility, whether ground
6 or pole mounted, is cumulatively no more than twenty-eight cubic feet in
7 volume, provided that no single piece of equipment on the Utility Pole
8 shall exceed nine cubic feet in volume; and no single piece of ground
9 mounted equipment **shall exceed fifteen cubic feet in volume, exclusive**
10 **of equipment** by an electric utility or municipal electric utility to power
11 the Small Wireless Facility.

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

17 R. “Stealth”, integrated as an architectural feature of a structure or that is designed to
18 camouflage or conceal the presence of the Telecommunications Facility, Wireless
19 Support Structure, or Antenna so that the purpose of the Telecommunications
20 Facility, Wireless Support Structure, or Antenna is not readily apparent to a casual

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1 observer however, such term shall not include wireless support structures,
2 electric transmission structures, or break-away poles owned by the state
3 Highways and Transportation Commission ;

4 S. “Technically Feasible”, by virtue of engineering or spectrum usage, the proposed
5 placement for a Small Wireless Facility or its design or site location can be
6 implemented without a reduction in the functionality of the Small Wireless
7 Facility;

8 T. “Utility Pole”, a pole or similar structure that is or may be used in whole or in part
9 by or for wireline communications, electric distribution, lighting, traffic control,
10 signage, or a similar function, or for the Collocation of Small Wireless Facilities;

11 U. “Wireless Facility”, equipment at a fixed location that enables wireless
12 communications between user equipment and a communications network,
13 including equipment associated with wireless communications and radio
14 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power
15 supplies and comparable equipment, regardless of technological configuration.

16 The term includes Small Wireless facilities. The term does not include:

- 17 1. The structure or improvements on, under, or within which the equipment is
18 Collocated;
- 19 2. Coaxial or fiber-optic cable between Wireless Support Structures or Utility
20 Poles;

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- 1 3. Coaxial or fiber-optic cable not directly associated with a particular Small
2 Wireless Facility; or
- 3 4. A Wireline Backhaul Facility
- 4 V. “Wireless Infrastructure Provider”, any Person, including a Person authorized to
5 provide telecommunications service in the state, that builds or installs wireless
6 communication transmission equipment or wireless facilities but that is not a
7 Wireless Services Provider;
- 8 W. “Wireless Provider”, a wireless infrastructure provider or a Wireless Services
9 Provider;
- 10 X. “Wireless Services”:, any services using licensed or unlicensed spectrum,
11 **including the use of WiFi**, whether at a fixed location or mobile, provided to the
12 public using wireless facilities;
- 13 Y. “Wireless Services Provider”, a Person who provides wireless services;
- 14 Z. “Wireless Support Structure”, an existing structure, such as a monopole or tower,
15 whether guyed or self-supporting, designed to support or capable of supporting
16 wireless facilities; an existing or proposed billboard; an existing or proposed
17 building; or other existing or proposed structure capable of supporting wireless
18 facilities, other than a structure designed solely for the Collocation of Small
19 Wireless Facilities. Such term shall not include a Utility Pole.

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1 AA. “Wireline Backhaul Facility”, a physical transmission path, all or part of which
2 is within the Right-of-Way, used for the transport of communication data by wire
3 from a wireless facility to a network.

4 **SECTION THREE.** General Standards

5 A. Neither the City, nor any person owning, managing, or controlling City Utility
6 Poles, shall enter into an exclusive arrangement with any person for use or
7 management of the Right-of –Way for the Collocation of Small Wireless Facilities
8 or the installation, operation, marketing, modification, maintenance, management,
9 or replacement of City Utility Poles within the Right-of –Way, or for the right to
10 attach to such Utility Poles within the Right of Way.

11 B. The City, in applying the provisions of this Chapter, will act in a competitively
12 neutral manner with regard to all other users of the Right-of-Way.

13 C. Nothing in this Chapter limits the ability of the City to require an Applicant to
14 obtain one or more permits of general applicability **that do not apply exclusively**
15 **to Small Wireless Facilities** in addition to the Permit required by this Chapter, in
16 order to Collocate a Small Wireless Facility or install a new, modified, or
17 replacement Utility Pole associated with a Small Wireless Facility.

18 D. The City may require a Permit under Applicable **Codes, ordinances**, or this
19 Chapter, with reasonable conditions, for work in a Right-of-Way that will involve
20 excavation, affect traffic patterns, obstruct traffic in the Right-of-Way, or
21 materially impede the use of a sidewalk.

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- 1 E. A Small Wireless facility must comply with reasonable, objective, and cost-
2 effective Stealth concealment or safety requirements determined by the City,
3 **provided that Stealth concealment requirements are published in advance by**
4 **the Board of Public Service and are no more burdensome than those required**
5 **as part of other telecommunications infrastructure deployments.**
- 6 F. Reasonable, Technically Feasible, nondiscriminatory, and technologically neutral
7 design and Stealth concealment measures are required for Small Wireless
8 Facilities or Utility Poles.
- 9 G. Wireless Providers, upon adequate notice and at the facility owner's own expense,
10 shall relocate facilities as may be needed in the interest of public safety and
11 convenience.
- 12 H. Except as otherwise provided in this Chapter **and applicable state and federal**
13 **laws**, in reviewing applications for Small Wireless Facilities, Wireless Support
14 Structures and Utility Poles, the City will exercise zoning, land use, planning, and
15 permitting authority within its territorial boundaries.
- 16 I. Nothing in this Chapter shall be interpreted to impose any new requirements on
17 cable providers for the provision of such service.
- 18 J. Small Wireless Facilities or Utility Poles constructed or operational before August
19 28, 2018, which were approved by the City by permit or agreement may remain
20 installed and be operated under the requirements of this Chapter.

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1 K. Only one Small Wireless Facility shall be installed per utility pole; however,
2 nothing in this chapter limits the number of wireless providers that may use a
3 Small Wireless Facility.

4 **SECTION FOUR. Permitting Provisions**

5 A. Permit Requirements-Inside the Right-of-Way.

6 1. Any Person desiring to [~~construct~~] **Collocate** Small Wireless Facilities,
7 ~~[and the installation, maintenance, modification, operation, and~~
8 ~~replacement]~~ **or install, maintain, modify, operate, or replace** Utility
9 Poles along, across, upon, and under the Right-of-Way is not subject to
10 zoning review or approval; except that the placement of new or modified
11 Utility Poles in single-family residential areas or in designated Historic
12 Districts as of August 28, 2018, remain subject to any applicable zoning
13 and [~~aesthetic~~] **concealment** requirements.

14 2. Small Wireless Facilities and Utility Poles shall be installed and
15 maintained so as not to obstruct or hinder the usual travel, including
16 pedestrian travel, or public safety on the Right-of-Way or obstruct the legal
17 use of the Right-of-Way by the City or other authorized Right-of-Way
18 users.

19 A new, replacement, or modified Utility Pole installed in the Right-of -Way
20 shall not be subject to zoning requirements so long as the Utility Pole does not
21 exceed the greater of ten feet in height above the tallest existing Utility Pole in

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1 place as of January 1, 2019, located within five hundred (500) feet of the new
2 Utility Pole in the same Right-of-Way **or fifty feet above ground level**. New
3 Small Wireless Facilities in the Right-of-Way shall not extend more than ten
4 (10) feet above an existing Utility Pole [~~in subsection 2 above~~] **in place as of**
5 **August 28, 2018 for Small Wireless Facilities on a new pole, above the**
6 **height permitted for a new Utility Pole under this Section.**

7 3. A Wireless Provider shall be permitted to replace Decorative Poles when
8 necessary to Collocate a Small Wireless Facility, but any replacement pole
9 shall reasonably conform to the design aesthetics of the Decorative Pole or
10 Poles being replaced. The term “reasonably conform” as used herein, shall
11 mean that the replacement pole shall be as nearly identical to the
12 Decorative Pole replaced as is feasible. The Board of Public Service is
13 authorized to determine if the replacement pole reasonably conforms.

14 4. The City may require replacement of a City Utility Pole on a
15 nondiscriminatory basis for reasons of safety and reliability, including a
16 demonstration that the Collocation would make the City Utility Pole
17 structurally unsound, and the replacement must comply with City Utility
18 Pole standards and specifications in effect **and published by the Board of**
19 **Public Service**, at the time the permit application is submitted.

20 5. On a nondiscriminatory basis, the City shall not permit more than one
21 Small Wireless Facility per Utility Pole.

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1 B. Permit Requirements-Outside the Right-of-Way

2 1. The City will allow Collocation of Small Wireless Facilities on [~~City~~
3 ~~Wireless Facilities on~~] City Wireless Support Structures and City Utility
4 Poles that are located on City property outside the Right-of-Way to the
5 same extent, if any, that it allows access to such structures for other
6 commercial projects or uses. Any such Collocations shall be subject to
7 reasonable and nondiscriminatory rates, fees and terms as provided in an
8 agreement between the City and the Wireless Provider, and not otherwise
9 governed by this Chapter.

10 2. **The City shall not enter into an** [~~Any~~] exclusive agreement between the
11 City and a Wireless Provider concerning City Utility Poles or City
12 Wireless Support Structures that are located on City property outside the
13 Right-of-Way, including stadiums and enclosed arenas, **unless the**
14 **agreement meets** [~~must include~~] the following requirements:

15 a. ~~If~~ The Wireless Provider provides service using a shared network of
16 Wireless Facilities, [~~it must make~~] **and makes the** shared network
17 available for access by other Wireless Providers on reasonable and
18 nondiscriminatory rates and terms that shall include use of the
19 entire shared network as to itself, an affiliate, or other entity, or the
20 Wireless Provider must allow other Wireless Providers to Collocate

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1 Small Wireless Facilities on nondiscriminatory rates and terms as to
2 itself, an affiliate or any other entity; or

3 ~~b.—[The Wireless Provider must allow other Wireless Providers to~~
4 ~~Collocate Small Wireless Facilities on reasonable and~~
5 ~~nondiscriminatory rates and terms as to itself, an affiliate, or~~
6 ~~any other entity.]~~

7 C. Permit Process for an Applicant Seeking to [~~Construct~~] Collocate Small Wireless
8 Facilities In the Right-of-Way or on City Wireless Support Structures outside the
9 Right-of-Way, or to Install, Replace, Maintain, or Operate a Utility Pole Inside the
10 Right-of-Way

11 1. An applicant seeking to [~~construct~~] Collocate Small Wireless Facilities in
12 the Right-of-Way or on City Wireless Support Structures outside the Right-
13 of-Way, or to install, replace, maintain or operate a Utility Pole inside the
14 Right-of-Way, must first submit an Application for a Permit to the Board
15 of Public Service. The Board of Public Service shall design and make
16 available to Applicants a standard Application form, consistent with the
17 provisions of this Ordinance, which all Applicants must use in order to
18 accomplish the purposes of this Chapter. Except for the requirements in
19 subsection 2.b. below, an Applicant shall not be required to provide more
20 information to obtain a Permit under this Chapter than other
21 Communications Service Providers that are not Wireless Providers.

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- 1 2. An Application for a Permit shall include the following as per requirements
2 as may be established by the Board of Public Service:
- 3 a. Construction and engineering drawings as per Board of Public
4 Service Requirements;
 - 5 b. An attestation that the Small Wireless facility complies with the
6 volumetric limitations in the definition of Small Wireless facility;
 - 7 c. Information on the height of any new, replacement or modified
8 Utility Pole;
 - 9 d. Applicable indemnity, insurance, performance bond information
10 required in Section [~~Seven~~] Six;
 - 11 e. An Applicant that is not a Wireless Services Provider must provide
12 evidence of agreements or plans demonstrating that the Small
13 Wireless Facilities will be operational for use by a Wireless
14 Services Provider within one year after the Permit issuance date,
15 unless the City and the Applicant agree to extend this period or if
16 delay is caused by lack of commercial power or communications
17 transport facilities to the site and the Applicant notifies the City
18 thereof. An Applicant that is a Wireless Services Provider must
19 provide this information by attestation.
 - 20 f. Plans and detailed cost estimates for any make-ready work as
21 needed.

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- 1 i. The Applicant shall be solely responsible for the cost of any
2 make-ready work.
- 3 ii. The applicant must seek and approve any make -ready work
4 cost estimates provided by the city and include the approved
5 estimate in the permit application.
- 6 g. Each Permit shall include projected commencement and
7 termination dates, or, if such dates are unknown at the time the
8 Permit is issued, a provision requiring the Permit holder to provide
9 the Board of Public Service with reasonable advance notice of such
10 dates once they are determined.
- 11 h. Pursuant to 67.5113(1), RSMo., the City shall receive Applications
12 for, process, and issue such Permits from Wireless Providers or
13 their agents applying for a permit to Collocate a Small Wireless
14 Facility [~~or install a new, Small Wireless Facility,~~] subject to the
15 following requirements:
- 16 i. An Applicant shall not be required to perform services or
17 provide goods unrelated to the permit, such as in-kind
18 contributions to the City, including reserving fiber, conduit
19 or pole space for the City;
- 20 ii. An Applicant shall not be required to provide more
21 information to obtain a Permit than Communications

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- 1 Service Providers that are not Wireless Providers, provided
2 that an Applicant shall include construction and engineering
3 drawings and information demonstrating compliance with
4 the criteria of this section and an attestation that the Small
5 Wireless Facility complies with applicable volumetric
6 limitations;
- 7 iii. An Applicant shall not be required to place Small Wireless
8 Facilities on any specific Utility Pole or category of poles or
9 **[require] place** multiple antenna systems on a single Utility
10 Pole;
- 11 iv. There is no limit as to the placement of Small Wireless
12 Facilities by minimum horizontal separation distances;
- 13 v. An Applicant shall comply with reasonable, objective, and
14 cost-effective Stealth concealment or safety requirements as
15 provided herein;
- 16 vi. An Applicant that is not a Wireless provider shall provide
17 evidence of agreements or plans demonstrating that the
18 Small Wireless Facilities will be operational for use by a
19 Wireless Services Provider within one year after the Permit
20 issuance date, unless the City and the Applicant agree to
21 extend this period or if delay is caused by lack of

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1 commercial power or communications transport facilities to
2 the site and the Applicant notifies the City thereof. An
3 Applicant that is a Wireless Service Provider shall provide
4 the information required by this subdivision by attestation.

5 D. Fees and Rates. Each such Application shall be accompanied by payment as
6 designated in this Chapter.

7 1. General Provisions.

- 8 a. This section does not limit the City's ability to recover specific
9 removal costs from the attaching Wireless Provider for abandoned
10 structures. The rates to Collocate on City Utility Poles shall be
11 nondiscriminatory regardless of the services provided by the
12 Collocating Applicant.
- 13 b. The City shall not require a Wireless Provider to pay any rates,
14 fees, or compensation to the City or other Person other than what is
15 expressly authorized by sections 67.5110 to 67.5131, RSMo. (while
16 in effect) **for the Collocation of a Small Wireless Facility**; for the
17 use and occupancy of a Right-of-Way; or for the installation,
18 maintenance, modification, operation, and replacement of Utility
19 Poles in the Right-of-Way.

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- 1 c. Any fees collected pursuant to this ~~[section]~~ **chapter** will be used
2 only to reimburse the City for its actual incurred costs and will not
3 be used to generate revenue to the City above such costs.
- 4 d. The City may not require or accept in-kind services in lieu of any
5 fee.
- 6 e. The rates to Collocate on City Utility Poles shall be
7 nondiscriminatory regardless of the services provided by the
8 Collocating Applicant.
- 9 2. Collocation Rate. The rate for Collocation of a Small Wireless Facility to a
10 City Utility Pole is \$150.00 per pole per year.
- 11 3. Application Fee.
- 12 a. The Fee for an Application for the Collocation of a Small Wireless
13 Facility on an existing City Utility Pole is \$100.00 per Small
14 Wireless Facility, not including Permit Fees required for any make-
15 ready work.
- 16 b. An Applicant filing a consolidated Application shall pay \$100.00
17 per Small Wireless facility included in the consolidated
18 Application.
- 19 c. The fee for an Application for the installation, modification, or
20 replacement of a Utility Pole and the Collocation of an associated
21 Small Wireless Facility is \$500.00 per pole not including the make-

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1 ready work associated with the installation, modification or
2 replacement of a Utility Pole.

3 4. Collocation Rate. The Rate for Collocation of a Small Wireless Facility to
4 a City Utility Pole is \$150.00 per year.

5 E. Timing for Processing of an Application.

6 1. Within fifteen (15) days of receiving an Application, the City shall
7 determine and notify the Applicant in writing whether the Application is
8 complete. An Application shall not be deemed received unless the
9 Application **contains all required documentation as outlined and**
10 **published by the Board of Public Service. If the actual documentation**
11 **provided is inadequate or incomplete then** an Application is incomplete,
12 AND the City shall specifically identify the missing information in writing.
13 **The processing deadline in Subdivision 2 of this Subsection is tolled**
14 **from the time the City sends notice to the applicant and the applicant**
15 **provides the required information or as agreed upon by the applicant**
16 **and the City.**

17 2. The City shall process and approve or deny an Application for Collocation
18 of a Small Wireless Facility within forty-five (45) days of receipt.

19 3. The City shall process and approve or deny an Application for installation
20 of a new, modified, or replacement Utility Pole associated with a Small
21 Wireless Facility within sixty (60) days of receipt.

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1 4. An Applicant may file a consolidated Application and receive a single
2 Permit for the Collocation of multiple Small Wireless Facilities.

3 a. An Application may include up to twenty (20) separate Small
4 Wireless Facilities, provided that they are for the same or materially
5 same design of Small Wireless Facility being Collocated on the
6 same or materially the same type of Utility Pole or Wireless
7 Support Structure, and geographically proximate. The Application
8 shall provide information sufficient to determine whether the
9 Applicant has met the requirements of this section. The City shall
10 have discretion to determine whether the Application meets the
11 requirements of this section.

12 b. If the City receives individual Applications for approval of more
13 than fifty (50) Small Wireless Facilities or consolidated
14 Applications for approval of more than seventy-five (75) Small
15 Wireless Facilities within a fourteen (14) day period, whether from
16 a single Applicant or multiple Applicants, the City may, upon its
17 own request, obtain an automatic thirty (30) day extension for any
18 additional Collocation or replacement or installation Application
19 submitted during that fourteen (14) day period or in the fourteen
20 (14) day period immediately following the prior fourteen (14) day

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1 period. The City will promptly communicate its request to each and
2 any affected Applicant.

3 c. The denial of one or more Small Wireless facilities in a
4 consolidated Application shall not delay processing of any other
5 Small Wireless Facilities in the same batch or constitute the basis
6 for denial of other Small Wireless Facilities within the
7 consolidated application or the application as a whole.

8 5. The City shall provide a good faith estimate for any make-ready work
9 necessary to enable a City Utility Pole to support the requested Collocation
10 by a Wireless Provider, including pole replacement if necessary, within
11 sixty (60) days after receipt of a complete Application. With the exception
12 of Make-ready work for power, Make-ready work, including any pole
13 replacement, shall be completed within sixty (60) days of written
14 acceptance of the good faith estimate and advance payment, if required, by
15 the Applicant.

16 6. An Application that is not acted on within the specified time period is
17 deemed approved.

18 7. For any Application denied:

19 a. The City shall document the complete basis for a denial in writing,
20 and send the documentation to the Applicant on or before the day
21 the City denies the Application.

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- 1 b. The Applicant may cure the deficiencies identified by the City and
2 resubmit the Application within thirty (30) days of the denial
3 without paying an additional Application Fee.
- 4 c. The City shall approve or deny the revised Application within thirty
5 (30) days. Any subsequent review shall be limited to the
6 deficiencies cited in the denial.
- 7 8. The City will not institute, either expressly or de facto, a moratorium on
8 filing, receiving, or processing Applications or issuing permits or other
9 approvals, if any for the Collocation of Small Wireless facilities or the
10 installation, modification or replacement of Utility Poles to support Small
11 Wireless Facilities.
- 12 a. The city may institute and may impose a temporary moratorium on
13 Applications for Small Wireless Facilities and the Collocation
14 thereof for no more than thirty (30) days in the event of a major and
15 protracted staffing shortage that reduces the number of personnel
16 necessary to receive, review, process, and approve or deny
17 Applications for the Collocation of Small Wireless Facilities by
18 more than fifty (50) percent.
- 19 F. Denial of an Application. An Application for a proposed Collocation of a Small
20 Wireless facility or installation, modification, or replacement of a Utility Pole

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1 otherwise meeting the requirements of this Chapter will be denied if the action
2 proposed in the Application could reasonably be expected to:

- 3 1. Materially interfere with the safe operation of traffic control equipment or
4 City-owned communications equipment;
- 5 2. Materially interfere with sight lines or clear zones for transportation,
6 pedestrians, or non-motorized vehicles;
- 7 3. Materially interfere with compliance with the Americans With Disabilities
8 Act, or similar federal or state standards regarding pedestrian access or
9 movement;
- 10 4. Materially obstruct or hinder the usual travel or public safety on the Right-
11 of-Way;
- 12 5. Materially obstruct the legal use of the Right-of-Way by the City, utility, or
13 other third party;
- 14 6. Fail to comply with applicable Codes, including nationally recognized
15 engineering standards for Utility Poles or Wireless Support Structures;
- 16 7. Fail to comply with the reasonably objective and documented aesthetics of
17 a Decorative Pole and the Applicant does not agree to pay to match the
18 applicable decorative elements;
- 19 8. Fail to comply with reasonable and nondiscriminatory undergrounding
20 requirements contained in City ordinances as of January 1, 2018, or
21 subsequently enacted that require all utility facilities in the area to be

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1 placed underground and prohibit the installation of new or the modification
2 of existing Utility Poles in a Right-of-Way without prior approval,
3 provided that such requirements include a waiver or other process of
4 addressing requests to install such Utility Poles and do not prohibit the
5 replacement or modification of existing Utility Poles consistent with
6 applicable law or the provision of Wireless Services;

7 9. Any other reason not prohibited by applicable law or regulation.

8 G. Approval of an Application.

9 1. The City shall review each Application for a Permit and, upon determining
10 that: (1) the Applicant has submitted all necessary information; (2) there is
11 no basis under subsection F above to deny the Application, and (3) the
12 Applicant has paid the appropriate Fee, the City shall issue the Permit.

13 2. If the City approves an Application, the Applicant is authorized to:
14 a. Undertake the installation or Collocation;
15 b. Operate and maintain the Small Wireless Facilities and any
16 associated Utility Pole covered by the Permit for a period of not
17 less than ten years, which shall be renewed for equivalent durations
18 so long as they are in compliance with this Chapter.

19 3. Installation or Collocation for which a Permit is granted under this Chapter
20 shall be completed within one year after the Permit issuance date unless the
21 City and the Applicant agree to extend this Period, or the Applicant notifies

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1 the City that the delay is caused by a lack of commercial power or
2 communications transport facilities to the site.

3 4. The City may approve a Permit subject to a reservation to reclaim space in
4 the Utility Pole, when and if needed, to meet the Utility Pole owner’s core
5 utility purpose or a documented City plan projected at the time of the
6 Application.

7 H. No Application Required. No Application is required for:

- 8 1. Routine maintenance on previously permitted Small Wireless facilities;
9 2. The replacement of Small Wireless facilities with Small Wireless Facilities
10 that are the same or smaller in size, weight, and height; or
11 3. The installation, placement, maintenance, operation, or replacement of
12 micro wireless facilities that are strung on cables between Utility Poles in
13 compliance with applicable Codes.
14 4. The City must be provided with a description of any new equipment
15 installed so that the City may maintain an accurate inventory of the Small
16 Wireless Facilities at a particular location.

17 **SECTION FIVE. Construction Standards**

18 A. The construction, operation, maintenance, and repair of Small Wireless Facilities
19 shall be in accordance with Applicable Codes and standards including, as
20 applicable, other relevant City ordinances pertaining to construction, operation,
21 maintenance, and repair inside or outside the Rights-of-Way.

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- 1 B. All Small Wireless Facilities shall be installed and located with due regard for
2 minimizing interference with the public and with other users of a Right-of-Way,
3 including the City.
- 4 C. An Applicant shall not place Small Wireless facilities where they will damage or
5 interfere with the use of operation of previously installed facilities or obstruct or
6 hinder the various utilities serving the residents and businesses in the City of their
7 use of any Rights-of Way.
- 8 D. Any and all Rights-of-Way disturbed or damaged during the construction of Small
9 Wireless Facilities shall be promptly repaired or replaced by the Applicant to its
10 previous condition **before the disturbance or damage.**
- 11 E. Any Wireless Infrastructure Provider, contractor or subcontractor must be properly
12 licensed under laws of the State and all applicable local ordinances.
- 13 F. Each Wireless Infrastructure Provider, contractor or subcontractor shall have the
14 same obligations with respect to its work as Wireless Services Provider would
15 have hereunder and applicable laws if the work were performed by the Wireless
16 Services Provider. The Wireless Services Provider shall be responsible for
17 ensuring that the work of Wireless Infrastructure Providers, contractors or
18 subcontractors is performed consistent with their Permits and applicable law
19 **relating to the deployment of Small Wireless Facilities and Utility Poles.** shall
20 be **[fully]** responsible for all acts or omissions of any Wireless Infrastructure
21 Provider, contractor or subcontractor, and shall be responsible for promptly

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1 correcting any acts or omissions by a Wireless Infrastructure Provider, contractor
2 or subcontractor.

3 **SECTION SIX. Indemnity, Insurance, Performance Bond**

4 A. Indemnity.

5 1. Wireless Providers shall indemnify and hold the City, its officers and
6 employees harmless against any damage or personal injury caused by the
7 negligence of the Wireless Provider or its employees, agents, or
8 contractors.

9 B. Insurance.

10 1. As part of the Permit process, a Wireless provider must provide proof of
11 liability insurance coverage against any damage or personal injury caused
12 by the negligence of the Wireless Provider or its employees, agents, or
13 contractors. The Wireless Provider's liability insurance policy must name
14 the City and its officers and employees as additional insureds.

15 a. In the alternative, a Wireless Provider must demonstrate that it has
16 in effect a comparable self-insurance program.

17 C. Performance Bond.

18 1. As part of the Permit process, a Wireless Provider must post a performance
19 bond of \$1,500.00 per Small Wireless Facility or an amount not to exceed
20 \$75,000.00 across all Small Wireless Facilities.

21 2. The purpose of the performance bond is to

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- 1 a. Provide for the removal of abandoned or improperly maintained
2 Small Wireless Facilities, including those that the City determines
3 need to be removed to protect public health, safety, or welfare;
4 b. Restore the Right-of-Way in connection with the removal of **Small**
5 **Wireless Facilities**;
6 c. Recoup Rates or Fees that have not been paid by a Wireless
7 Provider in over twelve (12) months, provided the Wireless
8 provider has had **reasonable** notice and an opportunity to cure.
- 9 3. Upon completion of the **work associated with the** Small Wireless
10 facilities to the satisfaction of the Board of Public Service, the Board of
11 Public Service shall eliminate the bond or reduce its amount after a time
12 appropriate to determine whether the work performed was satisfactory,
13 which shall be established by the Board of Public Service considering the
14 nature of the work performed.
- 15 4. Recovery by the city of any amounts under the performance bond or
16 otherwise does not limit an Applicant's duty to indemnify the City in any
17 way, nor shall such recovery relieve an Applicant of its obligations under a
18 Permit or reduce the amounts owed to the City other than by the amounts
19 recovered by the City under the performance bond, nor in any respect
20 prevent the City from exercising any other right or remedy it may have.

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1 a. Exemption. Applicants that have at least twenty-five million dollars
2 (\$25,000,000.00) in assets in the State and do not have a history of
3 permitting noncompliance within the City’s jurisdiction shall be
4 exempt from the insurance and bonding requirements otherwise
5 required by this section. The City may require an Applicant to
6 provide proof by affidavit that its assets meet or exceed this
7 requirement at the time of filing the Application.

8 **SECTION SEVEN. Miscellaneous Provisions.**

9 A. Compliance with laws. Each Applicant shall comply with all applicable City
10 ordinances, resolutions, rules and regulations heretofore and hereafter adopted or
11 established.

12 B. Franchises not superseded. Nothing herein shall be deemed to relieve an Applicant
13 of the provisions of an existing franchise, license or other agreement or Permit.

14 C. Rights and Remedies.

15 1. The exercise of one remedy under this Chapter shall not foreclose use of
16 another, nor shall the exercise of a remedy or the payment of damages or
17 penalties relieve an Applicant of its obligations to comply with its Permits.
18 Remedies may be used alone or in combination; in addition, the City may
19 exercise any rights it has in law or in equity.

20 2. The City hereby reserves to itself the right to intervene in any suit, action
21 or proceeding involving any provisions of this Chapter.

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- 1 3. No Applicant shall be relieved of its obligation to comply with any of the
2 provisions of this Chapter by reason of any failure of the City to enforce
3 prompt compliance.
- 4 4. Nothing in this Chapter precludes the Board of Public Service from
5 adopting reasonable rules with respect to the removal of abandoned Small
6 Wireless Facilities, and the Board of Public Service is authorized to do the
7 same.
- 8 5. Incorporation by Reference. Any Permit granted pursuant to this Chapter
9 shall by implication include a provision that shall incorporate by reference
10 this Chapter into such Permit as fully as if copied therein verbatim.
- 11 6. Calculation of Time. Unless otherwise indicated, when the performance or
12 doing of any act, duty, matter, or payment is required under this Chapter or
13 any Permit, and a period of time is prescribed and is fixed herein, the time
14 shall be computed so as to exclude the first and include the last day of the
15 prescribed or fixed period of time.
- 16 7. Relocation of Facilities. Whenever, by reason of changes in the grade or
17 widening of a street or in the location or manner of constructing a water
18 pipe, drainage channel, sewer, or other City-owned underground or above
19 ground structure, **public safety or convenience** it is deemed necessary by
20 the City to move, alter [~~change~~], adapt or **change the location of**
21 underground or above ground facilities of a Wireless Provider, the Wireless

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1 Provider shall make the alterations or changes, on alternative Right-of-Way
2 provided by the City, if available, as soon as practicable [~~after being so~~
3 ~~ordered~~] **upon adequate notice** in writing by the City without claim **for**
4 [by] reimbursement or damages against the City.

5 8. Standards Applicable to City. Any standards in this Chapter relating to
6 Small Wireless Facilities shall be fully applicable to work performed by the
7 City and its departments.

8 **SECTION EIGHT.** Severability Clause. If any term, condition, or provision of this
9 Chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall
10 be valid in all other respects and continue to be effective. In the event of a subsequent change
11 in applicable law so that the provision that has been held invalid is no longer invalid, said
12 provisions shall thereupon return to full force and effect without further action by the City and
13 shall thereafter be binding on the Applicant and the City.

14 **SECTION NINE.** Savings Clause. Nothing contained herein shall in any manner be deemed
15 or construed to alter, modify, supersede, supplement or otherwise nullify any other ordinances
16 of the City or requirements thereof, whether or not relating to or on any manner connected
17 with the subject written hereof, unless expressly provided herein or hereafter.

18 **SECTION TEN.** This being an ordinance for the immediate preservation of public peace,
19 health and safety, it is declared to be an emergency measure within the meaning of Sections
20 19 and 20 of Article IV of the Charter of the City of the City of St. Louis and therefore this
21 ordinance shall become effective upon its passage and approval by the Mayor.

