

**AN ORDINANCE OF THE CITY OF WILDWOOD, MISSOURI, AMENDING VARIOUS PROVISIONS OF CHAPTER 415 OF THE CODE OF ORDINANCES OF THE CITY OF WILDWOOD (Zoning Ordinance); AMENDING CHAPTER 430 OF THE CODE OF ORDINANCES OF THE CITY OF WILDWOOD BY DELETING IT IN ITS ENTIRETY; ENACTING, IN LIEU THEREOF, A NEW CHAPTER 430; PROVIDING REGULATIONS FOR THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF WIRELESS SUPPORT STRUCTURES WITHIN THE CITY; OTHER MATTERS PERTAINING THERETO. (Wards -All)**

**WHEREAS**, pursuant to the Telecommunications Act of 1996 (the "TCA"), 47 U.S.C. § 332(c)(7)(a), "nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities"; and

**WHEREAS**, the TCA "was intended by Congress to foster competition among telecommunications providers, to improve the quality of their services, and to encourage the rollout of new technologies without delay." USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of the City of Des Moines, 465 F.3d 817, 820 (8<sup>th</sup> Cir. 2006); and

**WHEREAS**, in 2012, the United States Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012, which provides that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." 47 U.S.C. § 1455; and

**WHEREAS**, the Missouri General Assembly passed, and the Governor signed on March 20, 2014, Senate Bill 650, re-enacting the Uniform Wireless Communications Infrastructure Deployment Act (the "Wireless Act"), as amended by House Bill 1454, signed by the Governor on June 23, 2014; and

**WHEREAS**, the Wireless Act "is intended to encourage and streamline the deployment of broadcast and broadband facilities and to help ensure that robust wireless radio-based communication services are available throughout Missouri." Section 67.5090, RSMo. (2016); and

**WHEREAS**, the Planning and Zoning Commission of the City studied and considered proposed amendments to the City's regulations pertaining to the placement, construction, and modification of wireless support structures and accessory structures and have made recommendations to the City Council; and

**WHEREAS**, the City Council and the Planning and Zoning Commission held public hearings on the proposed amendments to the City's zoning regulations; and

**WHEREAS**, at these public hearings interested persons and residents were given an opportunity to be heard on this proposed amendments to the City's zoning regulations; and

**WHEREAS**, the City Council hereby finds and determines that it is to the benefit of the health, safety and general welfare of the residents of the City to update its regulations pertaining to the placement, construction and modification of wireless support structures and accessory structures.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILDWOOD, MISSOURI, AS FOLLOWS:**

**Section One.** That Subsection (C) of Section 415.030 of the Code of Ordinances of the City of Wildwood be and is hereby amended by adding thereto the following defined terms:

**Section 415.030. Definitions.**

C. The following words and phrases are defined:

**AGL (ABOVE GROUND LEVEL)**

Ground level shall be determined by the average elevation of the natural ground level within a radius of fifty (50) feet from the center location of measurement. The height of all wireless support structures and disguised support structures shall be measured AGL.

**DISGUISED SUPPORT STRUCTURE**

Shall have the same meaning as under Section 430.030 of this Code.

**SUBSTANTIAL MODIFICATION**

Shall have the same meaning as under Section 430.030 of this Code.

**WIRELESS SUPPORT STRUCTURE**

Shall have the same meaning as under Section 430.030 of this Code.

**Section Two.** Subsection (H) of Section 415.070 of the Code of Ordinances of the City of Wildwood be and is hereby amended by deleting it in its entirety and enacting, in lieu thereof, a new Subsection (H) of Section 415.070, to read as follows:

**Section 415.070. "FP" Floodplain District Regulations.**

- H. *Height Limitations For Structures.* The total height of any structure shall not exceed that permitted in the underlying zoning district, except where the use of the property includes structures restricted in height by the requirements of a conditional use permit or in the case of a wireless support structure, disguised support structure or the substantial modification thereof, subject to the provisions of Chapter 430 of the City Code.

**Section Three.** That paragraph 37 of Subsection (C) of Section 415.090 of the Code of Ordinances of the City of Wildwood be and is hereby amended by deleting it in its entirety and enacting, in lieu thereof, a new paragraph (37) to Subsection (C) of Section 415.090, to read as follows:

**Section 415.090. "NU" Non-Urban Residence District Regulations.**

- C. *Conditional Land Use and Development Permits Issued By The Commission.*

- 37. Wireless support structures, disguised support structures or the substantial modification thereof, subject to Chapter 430 of the City Code.

**Section Four.** That Subsection (C) of Section 415.110 of the Code of Ordinances of the City of Wildwood be and is hereby amended by enacting a new paragraph (26) to Subsection (C) of Section 415.110, to read as follows:

**Section 415.110. "R-1" Residence District Regulations.**

- C. *Conditional Land Use And Development Permits Issued By The Commission.*

- 26. Wireless support structures, disguised support structures or the substantial modification thereof.

**Section Five.** That Subsection (F) of Section 415.110 of the Code of Ordinances of the City of Wildwood be and is hereby amended by deleting it in its entirety and enacting, in lieu thereof, a new Subsection (F) of Section 415.110, to read as follows:

**Section 415.110. "R-1" Residence District Regulations.**

- F. *Height Limitations For Structures.* The maximum height of structures in the "R-1" Residence District shall be as set out below:
1. No building elevation of any dwelling structure or building accessory to a dwelling structure shall exceed three (3) stories or thirty-five (35) feet in height, whichever is less.
  2. Radio, television, public utility and communication transmitting, receiving or relay towers, wireless support structures or disguised support structures may be erected, or substantially modified, to any height as authorized by Chapter 430 of the City Code not in conflict with the provisions of Section 415.240 "Air Navigation Space Regulations".
  3. All other structures shall not exceed sixty (60) feet in height above the average finished ground elevation at the perimeter of such structure; except that the height of structures may be further restricted as provided in Section 415.240 "Air Navigation Space Regulations".

**Section Six.** That Subsection (F) of Section 415.120 of the Code of Ordinances of the City of Wildwood be and is hereby amended by deleting it in its entirety and enacting, in lieu thereof, a new Subsection (F) of Section 415.120, to read as follows:

**Section 415.120. "R-1A" Residence District Regulations.**

- F. *Height Limitations For Structures.* The maximum height of structures in the "R-1A" Residence District shall be as set out below:
1. No building elevation of any dwelling structure or building accessory to a dwelling structure shall exceed three (3) stories or forty-five (45) feet in height, whichever is less.
  2. All other structures, other than a public utility tower authorized by a conditional use permit or a wireless support structure, disguised support structure or substantial modification thereof subject to Chapter 430 of the City Code, shall not exceed sixty (60) feet in height above the average finished ground elevation at the perimeter of such structure; except that the height of structures may be further restricted as provided in Section 415.240 "Air Navigation Space Regulations".

**Section Seven.** That Subsection (F) of Section 415.130 of the Code of Ordinances of the City of Wildwood be and is hereby amended by deleting it in its entirety and enacting, in lieu thereof, a new Subsection (F) of Section 415.130, to read as follows:

**Section 415.130. "R-2" Residence District Regulations.**

- F. *Height Limitation For Structures.* The maximum height of structures in the "R-2" Residence District shall be as set out below:
1. No building elevation of any dwelling structure or building accessory to a dwelling structure shall exceed three (3) stories or thirty-five (35) feet in height, whichever is less.
  2. All other structures, other than a public utility tower authorized by a conditional use permit or a wireless support structure, disguised support structure or substantial modification thereof authorized by a conditional use permit shall not exceed sixty (60) feet in height above the average finished ground elevation at the perimeter of such structure; except that the height of structures may be further restricted as provided in Section 415.240 "Air Navigation Space Regulations".