

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF WILDWOOD, MISSOURI THAT AUTHORIZES THE ADDITION OF A NEW SECTION (415.610) TO CHAPTER 415 OF THE CODE OF ORDINANCES OF THE CITY OF WILDWOOD (Zoning Ordinance) TO ACCOMMODATE SMALL-CELL TECHNOLOGY DEPLOYMENTS IN THE CITY'S PUBLIC RIGHTS-OF-WAY AREAS AND OTHER LOCATIONS WITHIN THE CITY OF WILDWOOD, SUCH BEING CONSISTENT WITH RECENT STATE STATUTE IN THIS SAME REGARD, AND ALSO REFLECTING THE LETTER OF RECOMMENDATION OF THE PLANNING AND ZONING COMMISSION THAT IS DATED OCTOBER 21, 2019 ON THIS MATTER. (Wards -All)

WHEREAS, the need for robust broadband service for all Missouri residents, coupled with the efforts of providers of this type of service, led to the promulgation of new regulations by the State of Missouri in 2018 for small cell technologies; and

WHEREAS, the intent of this legislation was stated as follows: the "*Uniform Small Wireless Facility Deployment Act*" is to encourage and streamline the deployment of small wireless facilities and to help ensure that robust and dependable wireless radio-based communication services and networks are available throughout Missouri, which is a matter of legitimate statewide concern, by adopting a uniform statewide framework for the deployment of small wireless facilities and the utility poles to which they are attached consistent with Sections 67.5110 to 67.5121 and Sections 67.1830 to 67.1846;" and

WHEREAS, this new legislation allows wireless providers to use public rights-of-way areas for the deployment of newer technologies to provide better and more capable wireless communications and associated networks; and

WHEREAS, the use of these rights-of-way areas under this legislation does have some protections for local communities, like the City of Wildwood, but also shifts the burden and reduces the time and amount of scrutiny that such can provide of these facilities; and

WHEREAS, besides a bevy of new regulations being promulgated by the federal government over the last ten (10) to fifteen (15) years relative to wireless services, the State of Missouri has also chosen to foster an approach that places the private telecommunications industry's needs over that of its residents; and

WHEREAS, the collective legislative efforts, particularly in the last few years, that have been proposed, challenged, and passed continues a trend to limit this City's ability to manage its zoning processes for any type of telecommunication facilities, including small wireless technologies, and even the very control of its rights-of-way areas that it manages and maintains; and

WHEREAS, these legislative actions, more so than any other matters, have led to the need to create a new set of regulations for the small cell wireless technologies for the City of Wildwood.

WHEREAS, these regulations, as proposed to the Planning and Zoning Commission, reflect current requirements of the State's enabling legislation and the efforts of the Missouri Municipal League in drafting certain provisions for local governments consistent with the same; and

WHEREAS, the Planning and Zoning Commission of the City studied and considered these new regulations for small cell technologies pertaining to the placement, construction, and modification of and made a recommendation to the City Council, being contained in its Letter of Recommendation; 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 opportunities to be heard on these 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 adopt these regulations pertaining to the placement, construction and modification of small cell technologies in the City's public rights-of-way areas and other locations within the community.

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

Section One. That Chapter 415 of the Code of Ordinances of the City of Wildwood is hereby amended to include the following regulations for small cell technologies to be located in public rights-of-way areas within the City of Wildwood by adding a new section to the same, being *Section 415.610 Small Cell Technology Regulations*, and to read as follows:

Section 1. Applicability.

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

Section 2. Definitions.

(a) Definitions and Usage – General.

For the purposes of this Chapter, 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 Mo. Rev. Stat. § 67.5110-67.5121, and if not defined therein, the City Code, and, if not defined therein, their common and ordinary meaning. For further convenience, the first letter of terms, phrases, words, and abbreviations defined in this Chapter have been capitalized, but an inadvertent failure to capitalize such letter shall not

affect its meaning, nor shall the inadvertent capitalization of the first letter of a term, phrase, word or abbreviation not defined herein affect the meaning thereof.

- (b) "Antenna", communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;
- (c) "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;
- (d) "Applicant", any person who submits an application and is a wireless provider;
- (e) "Application", a request submitted by an applicant to an authority 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;
- (f) "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;
- (g) "Decorative Pole", an authority pole that is specially designed and placed for aesthetic purposes;
- (h) "Fee", a one-time, nonrecurring charge;
- (i) "Permit", a written authorization required by an authority to perform an action or initiate, continue, or complete a project;
- (j) "Rate", a recurring charge;
- (k) "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;
- (l) "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 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 cubic feet in volume, provided that no single piece of equipment on the utility pole shall exceed nine cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the small wireless facility.The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs and related conduit for the connection of power and other services;
- (m) "Utility Pole", a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities; provided, however, such term shall not include wireless support structures, electric transmission structures, or breakaway poles owned by the state highways and transportation commission;
- (n) "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;

- (o) "Wireless Infrastructure Provider", any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment or wireless facilities but that is not a wireless services provider;
- (p) "Wireless Provider", a wireless infrastructure provider or a wireless services provider;
- (q) "Wireless Services", any services using licensed or unlicensed spectrum, including the use of wifi, whether at a fixed location or mobile, provided to the public using wireless facilities;
- (r) "Wireless Services Provider", a person who provides wireless services;
- (s) "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.

Section 3. General Standards.

- (a) The City will not enter into an exclusive arrangement with a Wireless Provider or any other person 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 Utility Poles.
- (b) The City will not allow an exclusive arrangement with any person for the right to attach to City poles in the Right-of-Way.
- (c) No Wireless Provider shall have the power of eminent domain with respect to Small Wireless Facilities.
- (d) The City, in applying the provisions of this Chapter, will act in a competitively neutral manner with regard to other users of the Right-of-Way.
- (e) Nothing in this Chapter will limit the ability of the City to require an Applicant to obtain one or more permits of general applicability in addition to the Permit required by this Chapter in order to Collocate a Small Wireless Facility or install a new, modified, or replacement Utility Pole associated with a Small Wireless Facility.
- (f) The City may require a Permit under this Chapter, 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.
- (g) The Department of Planning may specify and require a Small Wireless Facility to comply with reasonable, objective, and cost-effective concealment or safety requirements
- (h) 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.
- (i) The City may require, upon adequate notice and at the facility owner's own expense, relocation of facilities as may be needed in the interest of public safety and convenience.
- (j) Except as otherwise provided in this Chapter, the City will exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to Wireless Support Structures and Utility Poles.
- (k) Nothing in this Chapter shall be interpreted to impose any new requirements on cable providers for the provision of such service.
- (l) Nothing in this Chapter shall nullify, modify, amend, or prohibit a mutual agreement between the City and a Wireless Provider made prior to August 28, 2018.
- (m) Any renewal or extension of such a mutual agreement after August 28, 2018 shall comply with the terms of this Chapter.
- (n) Any Small Wireless Facilities and Utility Poles that become operational or were constructed before August 28, 2018, may remain installed and be operated under the requirements of this Chapter.

Section 4. Permitting Provisions.

(a) **Permit Requirements – Inside the Right-of-Way.**

Any Person desiring to construct Small Wireless Facilities in the Right-of-Way must first apply for and obtain a Permit, in addition to any other permit, license, or authorization required by Applicable Code.

- (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 a permitted use not subject to zoning review or approval.
- (2) The placement of new or modified Utility Poles in single-family residential areas or in areas zoned as historic as of August 28, 2018, remains subject to any applicable zoning requirements.

(b) **Permit Requirements – Outside the Right-of-Way.**

- (1) The Collocation of Small Wireless Facilities in property not zoned primarily for single-family residential use is a permitted use and not subject to zoning review or approval.
- (2) The City will allow Collocation of Small Wireless Facilities on City Wireless Support Structures and City poles 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 Chapter.
- (3) Any exclusive agreement between the City and a Wireless Provider concerning City poles or City Wireless Support Structures, including stadiums and enclosed arenas, must include the following requirements:
 - a. If the Wireless Provider provides service using a shared network of Wireless Facilities, it must make that shared network 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 must allow 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 Requirements – Small Wireless Facilities and Utility Poles.**

- (1) Small Wireless Facilities and Utility Poles shall be installed and maintained so as not to obstruct or hinder the usual travel or public safety within Right-of-Way or obstruct the legal use of the Right-of-Way by the City or other authorized Right-of-Way users.
- (2) Each new, replacement, or modified Utility Pole installed in the Right-of-Way shall not exceed the greater of ten feet in height above the tallest existing Utility Pole in place as of January 1, 2109 located within five hundred feet of the new Utility Pole in the same Right-of-Way, or fifty feet above ground level.
- (3) New Small Wireless Facilities in the Right-of-Way shall not extend more than ten feet above an existing Utility Pole in place as of August 28, 2018.
- (4) Small Wireless Facilities on a new Utility Pole shall not extend above the height permitted for a new Utility Pole in subsection 2 above.
- (5) A new, modified, or replacement Utility Pole that exceeds these height limits shall be subject to any applicable zoning requirements that apply to other Utility Poles.
- (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.
- (7) The City may require replacement of a City pole on a nondiscriminatory basis for reasons of safety and reliability, including a demonstration that the Collocation would make the City pole structurally unsound.

(d) **Permit Process.**

- (1) All applications for Permits shall be submitted to Department of Planning. The Department of Planning shall design and make available a standard Application form, consistent with the provisions of this Chapter, to accomplish the purposes of this Chapter. An Applicant shall not be required to provide more information to obtain a Permit under this Chapter 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;
 - b. An attestation that the Small Wireless Facility complies with the volumetric limitations in the definition of Small Wireless Facility;
 - c. Applicable indemnity, insurance, performance bond information required in Section 6;
 - d. 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 year after the permit issuance date, unless the City and the Applicant agree to extend this period or if delay is caused by lack of commercial power or communications transport facilities to the site and the Applicant notifies the City thereof. An Applicant that is a Wireless Services Provider must provide this information by attestation.
 - e. Plans and detailed cost estimates for any make-ready work as needed.
 - f. The Applicant shall be solely responsible for the cost of any make ready work.
 - g. Each Permit shall include projected commencement and termination dates of installation or, if such dates are unknown at the time the Permit is issued, a provision requiring the Permit holder to provide the Department of Planning with reasonable advance notice of such dates once they are determined.

(e) **Fees and Rates.** Each such Application shall be accompanied by payment of fees as designated in this Chapter.

(1) General.

- a. Any fees collected pursuant to this section will be used only to reimburse the City for its actual incurred costs and will not be used to generate revenue to the City above such costs.
- b. The City may not require or accept in-kind services in lieu of any fee.
- c. The rates to Collocate on City poles shall be nondiscriminatory regardless of the services provided by the Collocating Applicant.

(2) Application Fee.

- a. The total fee for an Application for the Collocation of a Small Wireless Facility on an existing City pole is \$100.00 per Small Wireless Facility.
- b. An Applicant filing a consolidated Application shall pay \$100.00 per Small Wireless Facility included in the consolidated Application. [Cannot exceed \$100 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 and the Collocation of an associated Small Wireless Facility is \$500.00 per Utility Pole. [Cannot exceed \$500 per pole]

(3) Collocation Rate.

- a. The rate for Collocation of a Small Wireless Facility to a City pole is \$150.00 per City pole per year. [Cannot exceed \$150 per 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 Cell Wireless Facilities in the Right-of-Way is \$??? [established under section 67.1840 for the recovery of actual, substantiated right-of-way management costs or as otherwise authorized under section 229.340; competitively neutral with regard to other uses of the Right-of -Way; cannot result in double recovery where existing charges already recover the direct and actual costs of managing the right-of-way.]

(f) **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.
- (2) The City shall process and approve or deny an Application for Collocation of a Small Wireless Facility within forty-five (45) days.
- (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.
- (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 they are for the same or materially same design of Small Wireless Facility being Collocated on the same or materially the same type of Utility Pole or Wireless Support Structure, and geographically proximate.
 - 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 day extension for any additional Collocation or replacement or installation Application submitted during that fourteen (14) day period or in the fourteen (14) day period immediately following the prior fourteen (14) day period. The City 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 of any other Small Wireless Facilities in the same batch;
- (5) The City shall provide a good faith estimate for any make-ready work necessary to enable a 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) An Application that is not acted on within the specified time period is deemed approved.
- (7) 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 or before 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.
- (8) 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. The City may impose 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

(g) **Denial of an Application.** The City may deny an Application 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; or,
- (8) Fail to comply with reasonable and nondiscriminatory undergrounding requirements contained in City ordinances as of January 1, 2018, or subsequently enacted for new developments, that require all 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, provided that such requirements include a waiver or other process of addressing requests to install such Utility Poles and do not prohibit the replacement or modification of existing Utility Poles consistent with applicable law or the provision of Wireless Services;

(h) **Approval of an Application.**

- (1) The Department of Planning shall review each Application for a Permit and, upon determining that the Applicant has submitted all necessary information and has paid the appropriate Fee, shall issue the Permit, except as provided in subsection (4).
- (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 this Chapter.
 - c. In determining whether sufficient capacity exists to accommodate the attachment of a new Small Wireless Facility, the City may approve a Permit subject to a reservation to reclaim such space, when and if needed, to meet the pole owner's core utility purpose or documented City plan projected at the time of the Application.

(i) **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.
- (4) The City may require 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.

Section 5. Construction Standards.

- (a) The construction, operation, maintenance, and repair of Small Wireless Facilities shall be in accordance with Applicable Codes.
- (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 Rights-of-way.
- (d) Any and all Rights-of-way disturbed or damaged during the Small Wireless Facilities work shall be promptly repaired or replaced by the Applicant to its previous condition.

- (e) Any Wireless Infrastructure Provider, contractor or subcontractor must be properly licensed under laws of the state and all applicable local ordinances.
- (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 laws 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, shall be fully responsible for all acts or omissions of any Wireless Infrastructure Provider, contractor or subcontractor, and shall be responsible for promptly correcting any acts or omissions by a Wireless Infrastructure Provider, contractor or subcontractor.

Section 6. Indemnity, Insurance, Performance Bond.

(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.

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

(c) Performance Bond.

- (1) As part of the Permit process, a Wireless Provider must post a performance bond of \$1,500.00 per Small Wireless Facility. [Not to exceed \$1,500 per Small Wireless Facility; the total bond amount across all facilities cannot exceed \$75,000]
- (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;
 - c. Recoup rates or fees that have not been paid by a Wireless Provider in over twelve months, provided the Wireless Provider has had notice and an opportunity to cure.
- (3) Upon completion of the work associated with the facilities, to the satisfaction of the Department of Planning, the Director of Planning 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 Department of Planning 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 authorized by this section.

Section 7. 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.
- (b) **Franchises Not Superseded.** Nothing herein relieves the City from any obligations under an existing franchise. 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 Chapter 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 Chapter.
 - (3) No Applicant shall be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City to enforce prompt compliance.
- (d) **Incorporation by Reference.**
Any Permit granted pursuant to this Chapter shall by implication include a provision that shall incorporate by reference this Chapter into such Permit as fully as if copied therein verbatim.
- (e) **Force Majeure.**
An Applicant shall not be deemed in violation of provisions of this Chapter where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Applicant's control, and a Permit shall not be revoked or an Applicant penalized for such noncompliance, provided that the Applicant takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Permit without unduly endangering the health, safety, and integrity of the Applicant's employees or property, the public, Right-of-Way, public property, or private property.
- (1) The City may institute a may impose a temporary moratorium on Applications for Small Wireless Facilities and the Collocation thereof for the duration of a federal or state-declared natural disaster plus a reasonable recovery period
 - (2) In emergency circumstances that result from a natural disaster or accident, the City may require the owner or operator of a Wireless Facility to immediately remove such facility if the Wireless Facility is obstructing traffic or causing a hazard on a City roadway. In the event that the owner or operator of the Wireless Facility is unable to immediately remove the Wireless Facility, the City may remove the Wireless Facility from the roadway or other position that renders the Wireless Facility hazardous. Under these emergency circumstances, the City shall not be liable for any damage caused by removing the Wireless Facility and may charge the owner or operator of the Wireless Facility the City's reasonable expenses incurred in removing the Wireless Facility.
- (f) **Calculation of Time.**
Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter 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.
- (g) **Severability.**
If any term, condition, or provision of this Chapter 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.

Section 8. Annexation.

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

Section 9. 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 to move, alter, change, adapt, or conform the underground or above ground facilities of a Wireless Provider, the Wireless Provider shall make the alterations or changes, on alternative Right-of-Way provided by the City, if available, as soon as practicable after being so ordered in writing by the City without claim for reimbursement or damages against the City.

Section 10. Standards Applicable To City.

Any standards in this Chapter relating to Small Wireless Facilities shall be fully applicable to work performed by the City and its departments.

Section 11. 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.

Section Two. Savings. Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Section Three. Severability. If any term, condition, or provision of this Ordinance 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 and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section Four. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

This Bill was passed and approved this ___ day of _____, 2019, by the Council of the City of Wildwood, Missouri, after having been read by title or in full two (2) times prior to its passage.

Presiding Officer

ATTEST:

Jessica Stirmlinger, City Clerk

The Honorable James R. Bowlin, Mayor

ATTEST:

Jessica Stirmlinger, City Clerk