

AN ORDINANCE AMENDING TITLE VI (UTILITIES AND TAXES), CHAPTER 115 (RIGHTS-OF-WAY MANAGEMENT) OF THE CODE OF ORDINANCES, CITY OF GLADSTONE, MISSOURI, FOR THE PURPOSE OF UPDATING THE CITY'S REQUIREMENTS FOR USE OF THE PUBLIC RIGHT-OF-WAY AND PERMITTING OF SMALL WIRELESS FACILITIES.

WHEREAS, the City has previously regulated the construction and deployment of telecommunications facilities and other similar facilities through a variety of ordinances and practices; and

WHEREAS, in the 2018 Legislative Session, the 101st Missouri General Assembly approved, and the Governor signed into law, House Bill 1991 with an effective date for a majority of the provisions of January 1, 2019; and

WHEREAS, House Bill 1991 amended and added certain provisions to the Revised Statutes of Missouri relating to the City's authority to regulate the construction and deployment of small wireless facilities; and

WHEREAS, the Federal Communications Commission did release on September 27, 2018, FCC-18-133 titled Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; and

WHEREAS, FCC-18-133 contained both a declaratory ruling and order regarding the City's authority to regulate the construction and deployment of small wireless facilities; and

WHEREAS, it is the intent and desire of the City Council of the City of Gladstone, Missouri, to amend and revise the Code of Ordinances, City of Gladstone, Missouri, to conform with both HB 1991 and FCC-18-133 to encourage the deployment of small wireless facilities within the City in a manner that (1) protects the right-of-way as a unique and physically limited resource critical to the travel and transportation of persons and property in the City; (2) manages the right-of-way to ensure that the right-of-way remains accessible for public uses including the partial occupancy of the right-of-way by utilities and public service entities, which enhance the health, welfare, and economic well-being of the City and its citizens; (3) promotes competition, securing higher quality services for the citizens of the City and consumers at large; and (4) does not materially inhibit the provision of telecommunications services.

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

Section 1. Incorporation of Whereas Clauses. That the whereas clauses stated above are hereby specifically incorporated into this ordinance by reference herein.

Section 2. Amendments. That Section 6.115.510 of the Code of Ordinances, City of Gladstone, Missouri, is hereby amended to read as follows:

Sec. 6.115.510. – Use of rights-of-way and locations generally.

- (1) The ROW-user's use of the rights-of-way shall in all matters be subordinate to the city's use or occupation of the rights-of-way. Without limitations of its rights, the city expressly reserves the rights to exercise its governmental powers now and hereafter vested in or granted to the city. In situations where multiple users are within the same location, first the municipal use shall have priority followed by persons with a valid and current rights-of-way use agreement, franchise, License, or other authorization with the city, followed by all others. All ROW users shall construct and maintain their facilities so as not to interfere with other users of the rights-of-way.
- (2) ROW-users shall coordinate the placement of facilities in a manner that minimizes adverse impact on any public improvement, as reasonably determined by the city. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvements as defined in the city's Design and Construction Manual. The design, location, and nature of all facilities shall be subject to the review and approval of the director of public works. Such review shall be on a non-discriminatory basis in application of city policy including ensuring safe, efficient, and appropriate use of the Row consistent with this chapter and applicable law, and approvals shall not be unreasonably withheld. City height limitations, applicable zoning restrictions, and general city policies with regard to all users of the ROW shall also be applicable to all facilities. For facility applications, the most restrictive adjacent underlying zoning district classification shall apply unless otherwise zoned and designated on the official zoning map.
- (3) No equipment or facilities that exceed 30 inches in height above ground level, except utility poles, shall be placed within the sight distance areas of intersections as determined under the city's sight distance standards and the most current edition of the Manual of the American Association of State Highway and Transportation Officials. Appropriate sight distances for such equipment or facilities related to driveways, alleys, or other entrances onto streets other than at intersections, shall be determined on a case-by-case basis by the director of public works, in order to provide reasonably safe locations for such equipment or facilities.
- (4) The ROW-user shall consider any request made by the city concerning placement facilities in private easements in order to limit or eliminate future street improvement relocation expenses.
- (5) All facilities shall be located and laid so as not to disrupt, adversely impact, or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the streets, alleys, sidewalks, or other public lands of the city.
- (6) All facilities of the ROW-user shall be placed so that they do not interfere with the use of rights-of-way and public lands, either existing or proposed. The city, through its director of public works, shall have the right to consult and review the location, design, and nature of the facility prior to installation. The City may, in its discretion, designate certain

locations or facilities in the rights-of-way to be excluded from use by the ROW user, including but not limited to, ornamental or similar specially-designed street lights or other facilities or locations which, in the reasonable judgment of the director of public works, do not have electrical service adequate or appropriate for the provider's facilities, or cannot safely bear the weight or wind loading thereof, or any other facility or location that in the reasonable judgment of the director of public works is incompatible with the proposed facilities, or would be rendered unsafe or unstable by the installation. To ensure that the right-of-way remains accessible for public uses, to minimize visual obtrusive of facilities, and allow for adequate city maintenance of the right-of-way, a new utility pole and any new ground mounted equipment associated with the new utility pole shall not be installed within one hundred and fifty feet of another utility pole or other ground mounted equipment on the same side of the right-of-way. Should a ROW-user seek to replace a utility pole, said replacement utility pole shall be sited within ten feet of the currently, existing utility pole and shall not be subject to the spacing requirements set forth in this subsection. The spacing requirement set forth in this subsection may be waived or altered by the city-engineer upon the ROW-user establishing good cause as to why said spacing requirement shall be waived or altered.

- (7) The ROW-user shall not interfere with the facilities of other ROW-users without their permission. If and when the city requires or negotiates to have a ROW-user cease using its existing poles and to relocate its facilities underground, all other ROW-users using the same poles shall also relocate their facilities underground at the same time. The cost of such relocations shall be borne in accordance with this chapter and the applicable tariff governing that ROW-user.
- (8) All facilities and other appurtenances laid, constructed, and maintained by the ROW user shall be laid, constructed, and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the state, as well as the rules and regulations of the commission or any other local, state, or federal agency jurisdiction over the parties.
- (9) The ROW-user shall cooperate promptly and fully with the city and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and location of its facilities within the rights-of-way, both underground and overhead, when requested by the city or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the city, its employees, agents, or authorized contractors.
- (10) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the rights-of-way from harm and damage.
- (11) The city shall have the power to prohibit or limit the placement of new or additional equipment or facilities within the right-of-way if there is insufficient space to accommodate all of the request of potential ROW users. In making such decisions, the city shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, public health and safety, the public's priority needs for the particular utility service, the condition of the right-of-way, the time of the year with respect to essential utilities, the protection of existing equipment in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public

interest.

- (12) All new facilities or structures shall collocate on existing poles or within existing conduit, trenches, or other facilities to minimize unnecessary use of right-of-way space, reduce potential existing or future interference and obstructions and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the public rights-of-way in the public interest (except where preempted by law or where good cause is established as determined by the city applying these objectives.) Where existing poles or facilities are available, or exist at or near the proposed use, unless otherwise approved, the applicant must either use such facilities or file a written request verified by the applicant for exception specifying the specific reasons why such facilities are not available or feasible to be used and addressing the objectives hereof.
- (13) ROW users may be required prior to any excavation or installation within the rights-of-way, to provide sufficient notification and joint installation opportunities on a shared cost basis to potential users of the rights-of-way as may be provided for by separate city policy. Such notifications and adopted policies shall be designed to maximize collocation of ROW users, to minimize the disturbance of the rights-of-way and to maximize usable capacity.

Section 3. New Article. That the Code of Ordinances, City of Gladstone, Missouri, is hereby amended by adding an article, to be number Article 7 (Small Wireless Facilities) to Chapter 115 (Rights-of-Way Management), which reads as follows:

ARTICLE 7. SMALL WIRELESS FACILITIES

Sec. 6.115.1400-. Intent, Preemption, and Sunset.

- (a) *Purpose.* Consistent with the requirements of the Uniform Small Wireless Facility Deployment Act, Section 67.5110, *et seq.*, RSMo, and in anticipation of a continued increased demand for the placement of small wireless facilities of the type regulated by the Uniform Small Wireless Facility Deployment Act and this article both within the public rights-of-way and in other locations within the jurisdiction of the city, the City Council of the City of Gladstone, Missouri, has found it to be in the best interests of the public health, safety, and general welfare of the city to adopt the regulations set forth in this article in order to establish generally applicable standards for the permitting, location, construction, deployment, regulation, operation, maintenance, repair, concealment and removal of small wireless facilities both within the public rights-of-way and in other locations within the jurisdiction of the city.
- (b) *Intent.* Sections 6.115.1400 through 6.115.1405 of the Code of Ordinances, City of Gladstone, Missouri is intended to encourage and streamline the deployment of small wireless facilities, as herein defined, to help ensure that robust and dependable wireless radio-based communication services and networks are available throughout the City of Gladstone while also protecting the health, safety, and welfare of the public and the limited public resource that is the public right-of-way. Specifically, the article is intended to:

- (1) Facilitate orderly construction and maintenance of facilities in the right-of-way, reduce the damage to the facilities of rights-of-way users, and minimize disruption of service to the citizens of the city;
 - (2) Manage the right-of-way to allow efficient location of small wireless facilities and maximize services to the citizens of the city;
 - (3) Allow for the maximum utilization of the rights-of-way to meet the demands due to technical innovations.
 - (4) Encourage responsible construction and maintenance practices in the city rights-of-way.
 - (5) Ensure that regulation of small wireless facilities does not have the effect of prohibiting the provision of personal wireless services, and does not unreasonably discriminate among functionally equivalent providers of such service;
 - (6) Prevent interference with the facilities, maintenance, and operations of the city's utilities and of other utilities lawfully located both within the public rights-of-way and in other locations within the city; and
 - (7) Enhance the ability of providers of communication services to provide such services to the community quickly, effectively, and efficiently
- (c) *Preemption.* Notwithstanding any ordinance to the contrary, the procedures set forth in this article shall be applicable to small wireless facilities existing or installed, built or modified after the effective date of this article to the fullest extent permitted by law. No provision of this article shall apply to any circumstances in which such application shall be unlawful under superseding federal or state law. Furthermore, if any section, subsection, sentence, clause, phrase, or portion of this article is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.
- (d) *Sunset.* This article shall expire on January 1, 2021, except that for small wireless facilities already permitted or collocated on authority poles prior to such date, the rate set forth in Sec. 6.115.14002(g) for collocation of small wireless facilities on authority poles shall remain effective for the duration of the permit authorizing the collocation.

Sec. 6.115.1401. Definitions

As used in this article, the following terms shall have the following meanings:

“Act” means the Uniform Small Wireless Facility Deployment Act, Section 67.5110, et seq., RSMo;

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

“Applicable Codes”, uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes enacted to prevent physical property damage or reasonably foreseeable injury to persons;

“Applicant”, any person who submits an application and is a wireless provider;

“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;

“Authority Pole” a utility pole owned, managed, or operated by or on behalf of an authority, but such term shall not include municipal electric utility distribution pole or facilities;

“Collocate” or “Collocation”, to install, mount, maintain, modify, operate, or replace small wireless facilities on or immediately adjacent to a wireless support structure or utility pole, provided that the small wireless facility antenna is located on the wireless support structure or utility pole;

“Decorative Pole”, an authority pole that is specially designed and placed for aesthetic purposes;

“Director”, the Director of Public Works or their authorized representative;

“Fee”, a one-time, nonrecurring charge;

“Permit”, a written authorization required by an authority to perform an action or initiate, continue, or complete a project;

“Rate”, a recurring charge;

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

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

Each wireless provider’s antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and

All other equipment associated with the wireless facility, whether ground or pole mounted, is cumulatively no more than twenty-eight (28) cubic feet in volume, provided that no single piece of equipment on the utility pole shall exceed nine (9) cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen (15) cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the small wireless facility.

The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements,

telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs and related conduit for the connection of power and other services;

“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;

“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:

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

Coaxial or fiber-optic cable between wireless support structures or utility poles;

Coaxial or fiber-optic cable not directly associated with a particular small wireless facility; or

A wireline backhaul facility;

“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;

“Wireless Provider”, a wireless infrastructure provider or a wireless services provider;

“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;

“Wireless Services Provider”, a person who provides wireless services;

“Wireless Support Structure”, an existing structure, such as a monopole or tower, whether guyed or self-supporting, designed to support or capable of supporting wireless facilities; an existing or proposed billboard; an existing or proposed building; or other existing or proposed structure capable of supporting wireless facilities, other than a structure designed solely for the collocation of small wireless facilities. Such term shall not include a utility pole.

“Zoning Ordinance” the Title VII – Zoning and Planning Ordinance of the City of Gladstone, Missouri.

Sec. 6.115.1402. General Requirements

(a) Height Restrictions

- (1) 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 August 28, 2018 located within five hundred feet of the new pole in the same Right-of-Way or fifty (50) feet above ground level at the site of the proposed installation, replacement, or modification.
- (2) New small wireless facilities in the right-of-way shall not exceed more than ten feet above an existing utility pole in place as of August 28, 2018.
- (3) Any new, modified, or replacement utility pole that exceeds these height limits shall be subject to a conditional use permit under the city's zoning regulations.

(b) Concealment Requirements. The reasonable, objective, cost-effective standards outlined in this subsection seek to ensure that all small wireless facilities deployed in the city are deployed in a manner that preserves the visual appearance of the surrounding area and the legal use of the right-of-way. Any of the requirements set forth in this subsection may be waived or altered by the director upon an applicant establishing good cause as to why the concealment requirements should not apply.

- (1) Small wireless facility antenna. All antennas mounted as part of the deployment of a small wireless facility shall be mounted to the top of the utility pole or wireless support structure and aligned with the centerline of the utility pole or wireless support structure, unless otherwise agreed to by the director based on the specific context and characteristics of the utility pole or wireless support structure.

- i. Shape. Any small wireless facility antenna collocated within the city shall be cylindrical or completely housed within a cylindrical enclosure or radome unless otherwise agreed to by the director based on the specific context and characteristics of the utility pole, wireless support structure, or small wireless facility.

- ii. Color. Exposed antennas and antenna enclosures shall match the color specifications of the utility pole or the wireless support structure.

- (2) Associated Pole Equipment. Any equipment attached to a pole as part of a small wireless facility shall be of the same or similar color as the pole on which it is attached. To the extent possible, any wires, fiber-optic cable, coaxial cable or any other cables associated with the collocation of a small wireless antenna running from any associated equipment, both pole mounted and ground mounted, shall run on the interior of the pole. If running any wires, fiber-optic cable, coaxial cable, or any other cable on the interior of the pole is not possible then said wires and cables shall either be located within a cylindrical tubing of the same or similar color as the pole and mount flush against the pole or be of the same or similar

color as the pole on which they are attached and mounted flush against the pole or in any other matter which would reasonably conceal them. The director, in their discretion, may require additional concealment requirements, including the attachment of banners or signs on either side of any associated pole equipment.

(3) Associated Ground Equipment. All associated ground equipment mounted as part of a small wireless facility deployment shall be placed to the greatest extent possible in an area so as to minimize its visual intrusiveness and detrimental effect to the legal use of the right-of-way. All associated ground equipment shall be located within a green cabinet or enclosure or any other color cabinet or enclosure that would minimize visual intrusiveness and conceal the associated ground equipment. To the extent possible,

(4) Replacement poles. Any replacement utility pole located for the purpose of siting a small wireless facility shall reasonably conform to the appearance of other similar utility or streetlight poles in the area.

(c) *Decorative Poles*. Any applicant seeking to replace a decorative pole for the purpose of collocating a small wireless facility shall replace said decorative pole with a pole conforming to the design aesthetics of the decorative pole being replaced. Conformance to the design aesthetics of the decorative pole means, that any replacement pole shall at a minimum be of the same or similar design as the decorative pole, contain the same or similar decorative elements of the original decorative pole, be of the same color as the original decorative pole and other decorative poles in the area and that the small wireless facility collocated on the replacement decorative pole be the same color as the decorative pole and the replacement decorative pole.

(d) *Indemnification, Insurance, Performance Bond*.

(1) Indemnification. 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.

(2) Insurance. As part of any permit issued by the city under this article, an applicant must provide proof of liability insurance coverage, prior to the effective date of any permit issued, against any damage or personal injury caused by the negligence of the wireless provider or its employees, agents, or contractors in an amount no less than the amount provided for in Section 537.210, RSMo. If the applicant is self-insured, the applicant must submit to the city proof of self-insurance in a comparable amount to the insurance referenced in the previous sentence.

(3) Performance Bond.

- i. An applicant for a permit under this article shall post a performance bond of \$ 1,500 per small wireless facility not to exceed \$75,000 for all small wireless facilities deployed by the applicant. The performance bond shall be used to:

- (i) 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;
 - (ii) Restore the right-of-way in connection with removals;
 - (iii) 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.
 - ii. Upon completion of the work associated with the permit to the satisfaction of the director, the director shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established by the director.
 - iii. Recovery by the city for any amounts under the performance bond required by this article 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 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.
 - iv. Applicants that have at least twenty-five million dollars in assets in the state and do not have a history of permitting noncompliance within the city's jurisdiction shall be exempt from the insurance and bonding requirements otherwise authorized by this subsection.
- (e) *Relocation of Facilities.* Whenever, in the interest of public safety and convenience, the city may require a wireless provider relocate, 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 as soon as practicable after being so ordered in writing by the city without claim for reimbursement or damages against the city.
- (f) *Calculation of time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this article or any permit, and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.
- (g) *Construction standards.* All requirements of this article shall apply to the construction, modification, and maintenance of small wireless facilities and are reincorporated herein as building code requirements to the extent permitted by law. The construction, operation, maintenance, and repair of small wireless facilities shall be in accordance with applicable codes. All small wireless facilities shall be installed and located with due regard to minimizing interference with the public and with other users of the right-of-way including the city. An applicant shall not place small wireless facilities or obstruct or

hinder the various utility serving the residents and businesses in the city of their use of any right-of-way. Any and all right-of-way disturbed or damaged during the small wireless facilities work shall be promptly repaired or replaced by the applicant to its previous condition. Any wireless infrastructure provider, contractor or subcontractor must be properly licensed under laws of the state and all applicable local ordinances. 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.

- (h) *Location.* Small wireless facilities and utility poles shall be installed and maintained so as not to obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of the right-of-way by the city or other authorized right-of-way users.
- (i) *Replacement.* The city may require an applicant to replace a utility pole on a nondiscriminatory basis for reasons of safety and reliability.
- (j) *Retained zoning authority.* Where authorized by applicable law the city may require that an applicant under this article receive all zoning approvals necessary or required by the zoning ordinance of the city.
- (k) *Deemed approved facilities.* Should the city fail to act with the time required by applicable law, any small wireless facility collocated on an existing structure or any installation, modification, or replacement of a utility pole shall be done in compliance with each and every provision of this article.

Sec. 6.115.1403. Small Wireless Facilities Permit.

- (a) *Applications.* Applications for a permit to collocate a small wireless facility on a utility pole or a permit for the installation, modification, or replacement of a utility pole shall be filed on such forms as required by the director and accompanied by the appropriate deposit as stated below. Applications are to be processed subject to the requirements of and in the manner and timeframe as otherwise established in this article and subject to the applicable time frames imposed by applicable law. Applications requesting any information that is prohibited by federal or state law under the applicable circumstance shall be deemed inapplicable to the subject application.

- (1) Collocation Application Fee. An application for a permit to collocate a small wireless facility on a utility pole shall be accompanied by a deposit of one hundred dollars (\$100) for each small wireless facility the applicant seeks to collocate on a utility pole.

- (2) Installation, Modification, Replacement Fee. Applications for a permit to install, modify, or replace a utility pole shall be accompanied by a deposit of five hundred dollars (\$500) for each installation, modification, or replacement sought by the applicant.
- (b) *Preapplication meeting*. Before any application is made, the applicant is encouraged to meet with the director to discuss, in general, the procedures and requirements for a permit request under this section.
- (c) *Application Process*.
- (1) Form; deficiency notice. Any application under this section shall be submitted on forms in accordance with the above to the director for a determination of completeness. Within the time prescribed by law of the receipt of an application, or such longer or other review times allowed by applicable law, the director shall review the application and identify any ways in which the application is not complete and provide the applicant with a written explanation of the deficiencies with citation to the code or statutes requiring such deficient item.
- (2) New application. Given the various time restrictions applicable to approvals under applicable law, any modification of an application other than to correct incompleteness may be denied by the director if the change is material or presents difficulty in completing review of the modified application within the established review time. In such circumstance, the modified application must be resubmitted as a new application and the original application shall be deemed withdrawn.
- (3) Approval or denial. The city shall approve or deny of the application to collocate a small wireless facility or the application for the installation, modification, or replacement of a utility within the timeframes provided by applicable law.
- (d) *Application Contents*. An application for a permit under this section shall contain, at a minimum, the following information:
- (1) Site-specific structural integrity and make-ready analysis prepared by a structural engineer. The make-ready analysis shall include plans and detailed cost estimates for any make-ready work as needed. Any cost associated with the make-ready work shall be the sole responsibility of the applicant.
- (2) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. The photographs shall include a digital photo simulation of the proposed location providing “before and after” views demonstrating the impact of the proposed wireless facilities on the surrounding environment, including the right-of-way if applicable.

- (3) The equipment type and model numbers of the antennas and all other wireless equipment associated with the small wireless facility.
- (4) An attestation that the small wireless facility complies with the volumetric limitations set forth in Sec. 6.115.1401.
- (5) Applicable indemnity, insurance, and performance bond information as required by this article.
- (6) An applicant that is not a wireless services provider must provide evidence of agreements or plans that demonstrate that the small wireless facility will be operational for use by a within one year after the permit for the applicable small wireless facility is issued, unless the city and applicant agree to extend this period in writing or if delay is caused by a lack of commercial power or communications transport facilities to the site and the applicant notifies the city in writing. The non-wireless service provider applicant must provide the above information by attestation, attached to the applicable application.
- (7) A projected commencement and termination date of the work proposed under the permit. If said dates are not known at the time of the application, then any permit holder shall provide the director advanced, written notice of such dates once determined.
- (8) Any information necessary to establish that the proposed collocation of the small wireless facility meets the concealment requirements of Sec. 6.115.1402(b).
- (9) Any information necessary to determine that the collocation meets the height restrictions of Sec. 6.115.1402(a).
- (10) In the event that the proposed small wireless facility is to be attached to an existing utility pole owned by an entity other than the city, the wireless provider shall provide legally competent evidence of the consent of the owners of such pole to the proposed collocation.
- (11) Any other information deemed to be relevant by the director.

(e) *Consolidated Applications.*

- (1) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities. An application may include up to twenty separate small wireless facilities, provided that they are for the same or materially same design of small wireless facility being collocated on the same or materially the same type of utility or wireless support structure and all the collocations are geographically proximate. The denial of one or more small wireless facilities in a consolidated application shall not delay the processing of any other small wireless facilities in the same batch;

- (2) If the city receives individual applications for approval of more than fifty small wireless facilities or consolidated applications for approval of more than seventy-five small wireless facilities within a fourteen 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 day period or in the fourteen day period immediately following the prior fourteen day period. The city will promptly communicate its request to each and any affected applicant.
- (f) *Make-ready work.* 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 the timeframe provided by applicable law. Make-ready work, including any pole replacement, shall be completed within the timeframe provided by applicable law.
- (g) *Rate for collocation.* If an application for the collocation of a small wireless facility is approved, the wireless provider shall pay to the city one hundred and fifty dollars (\$150) per year per small wireless facility collocated on an authority pole.

Sec. 6.115.1404. Denial of permit.

- (a) *Reasons.* The city may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole if the action proposed in the application submitted to the director 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 lights or clear zones for transportation, pedestrians, or nonmotorized vehicles;
 - (3) Materially interfere with compliance with the American Disability Act, 42 U.S.C. Sections 1201 to 12213, 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 an authority, utility or another third party;
 - (6) Fail to comply with the spacing requirement set forth in Sec. 6.115.510(6).
 - (7) Fail to comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;
 - (8) 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;

- (9) Fail to comply with undergrounding requirements as of January 1, 2018 or any new undergrounding requirements for new developments; or
 - (10) Any other reason as allowed by applicable state or federal law.
- (b) *Denial.* The City shall document the complete basis for the denial in writing and send said denial and any accompanying documentation to the applicant on the day the authority denies the application. The applicant may cure the deficiencies identified by the city and resubmit the application within the timeline provided for in applicable law without paying an additional application fee.

Sec. 6.115.1405. Fast-Track Small Wireless Facility Deployment

- (a) *General conditions.* Small wireless facilities meeting the below, additional requirements and all other requirements of this article may be authorized to be collocated with the approval of the director on an expedited 20-day time frame subject to the following additional requirements:
- (1) Only one small wireless facility shall be permitted per structure in the rights-of-way;
 - (2) The small wireless antenna and associated pole equipment shall be of the same or similar color as the pole on which it is to be attached;
 - (3) All wires and cables associated with the small wireless facility shall be installed on the interior of the pole; and
 - (4) No associated ground equipment shall be authorized; and
 - (5) No small wireless facility shall be located in a manner which obstructs or causes a safety concern for vehicle or pedestrian traffic; and
 - (6) If the proposed structure the applicant proposes to locate its small wireless facility on is not structurally sound, but the director finds such to be a desired location, the director can require the applicant to install a new substantially similar structure at its cost.
- (b) *New or replacements poles.* An applicant applying for approval of the siting of a small wireless facility under this section may request or require that a new or replacement utility pole may be located as part of such deployment subject to the following additional requirements:
- (1) The new or replacement utility poles is no greater than five (5) feet taller than the any adjacent or existing utility pole within the same right-of-way;
 - (2) The new or replacement utility pole is of the same or materially similar design as adjacent or surrounding utility poles;

- (c) *Application fee.* The application fee for the collocation of a small wireless facility under this section shall be seventy-five dollars (\$75). The application fee for a new or replacement utility pole under this section shall be four hundred dollars (\$400).
- (d) *Rate for collocation.* The rate for collocating a small wireless facility under this section shall be one hundred dollars (\$100) per small wireless facility collocated on an authority pole.
- (e) *Consolidated applications.* An applicant may file a consolidated application under this section regarding the collocation of twenty (20) small wireless facilities so long as the proposed small wireless facilities and any new or replacement utility poles are of the same design.
- (f) *Director's discretion.* Approval of small wireless facilities under this section shall be at the discretion of the director following the requirements and criteria stated in this section, this article or Chapter 115 generally. Any application under this section may be denied by the director if the application fails to meet any of the requirements of this section or any of the requirements of this article.

Section 4. Renumbering. It is the intention of the city council, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Gladstone, Missouri, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 5. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 6. Severability. The provisions of this ordinance are severable and if any provision hereof is declared invalid, unconstitutional or unenforceable, such determination shall not affect the validity of the remainder of this ordinance.

Section 7. Effective Date. This ordinance shall be in full force and effect on February 25, 2019.



Mayor Bill Garnos

Attest:



Ruth E. Bocchino, City Clerk

1st Reading: February 25, 2019

2nd Reading: February 25, 2019

GLADSTONE PLANNING COMMISSION MINUTES

Council Chambers February 13, 2019

1. Meeting called to Order- Roll Call. Chair McGee called the meeting to order at 6:00 pm.

Commissioners present were: Chase Cookson
Mike Ebenroth
Alicia Hommon
Gary Markenson
Jennifer McGee, Chair
Kim Murch
Larry Whitton

Not present: Nathan Hernandez
Katie Middleton
James New
Shari Poindexter
Bill Turnage

Also present: Kyle Yarber, Councilman
Austin Greer, Assistant to the City Manager/Planning Administrator
Cheryl Lamb, Administrative Assistant

2. Pledge of Allegiance to the United States of America.

3. Approval of Previous Meeting Minutes: January 22, 2019. Chair McGee asked if there was a motion to approve the minutes from the January 22, 2019 meeting. Mr. Whitton moved to approve the minutes; Ms. Hommon seconded. The minutes were approved, 7-0.

4. 2018 Work Plan. Mr. Greer asked the Commissioners to review the 2018 Work Plan and let him or Mr. Napoli know if they have any questions.

5. 2019 Work Plan. Mr. Greer asked the Commissioners to review the 2019 Work Plan and let him or Mr. Napoli know if they have any questions.

As Mr. Corcoran had not arrived, Chair McGee moved to Item 7 on the agenda.

7. Communications from City Council. Councilman Yarber shared that he was at Jefferson City at the Legislative Conference which he attended with Assistant City Manager, Bob Baer. They were able to visit with several area State Reps and State Senators. They were able to address some concerns regarding tax collection, legislation regarding court appearances and the State capping what local municipalities can do with sales tax, which should be decided by local voters as it is going for their services.

8. Communications from City Staff. Mr. Greer shared that the next meeting will be on March 4, 2019.

9. Communications from Planning Commission Members. Mr. Markenson informed the Commission that March 16th is the annual Gladstone Rotary Club Pancake and Sausage Breakfast. All of the money goes to local charities. He had tickets available for purchase after the meeting.

6. **Small Cell Ordinance changes.** City Attorney Padriac Corcoran presented a slide show on telecommunications specifically about small wireless facilities and the changes that state and federal law have had on how the city can regulate these wireless facilities. (A copy of the presentation and new ordinance are attached.)

Mr. Corcoran said that the first couple of slides show what they are looking at when it comes to small cell. He referred to photos on the overhead. The small wireless facilities can only communicate at most 2,000 feet. They jump around to get to a macro tower, which are our big towers that you see on North Oak and one at 69th. Those send the signal to the national network. Estimated deployment is sixty (60) per square mile.

Mr. Markenson asked if the estimated deployment of sixty (60) per square mile was per carrier.

Mr. Corcoron confirmed that was correct.

Mr. Markenson then asked how many carriers serve the area.

Mr. Corcoron stated that there are four (4). In our denser areas like North Oak, Antioch, downtown Linden, the places where there are a lot of people on their phones. Another way to look at it is 15 per square mile for less dense areas times four (4) which gets you to sixty (60) times the square mileage of the city, which is nine (9) miles exactly. There would be 540 of them deployed within the city in the next five years. This is a high estimate.

Mr. Markenson asked how many municipal-like stations have these towers on them.

Mr. Corcoron said that there are currently none in the City of Gladstone.

Mr. Markenson asked how many were on city buildings, water towers.

Mr. Corcoron replied that there are no small wireless facilities. There are macro towers on the water towers. He referred to his slides for clarification. On the right you see why this is happening. You see reduced latency, increased capacity, limit coverage and what they term bathroom coverage, which means coverage throughout your house or fixed wireless in your home; Google Fiber or Time Warner. Reduced latency has to do with self-driving cars. If you have a self-driving car that is only self-driving because it is connected to wireless it can't ever not be on wireless. If it's not on wireless, it crashes. The self-driving car is a forward example but explains why they are starting to build out now. Currently, the buildout you'll see in phase one is what is called pothole fixing. If you are driving and talking to someone on the phone, which you shouldn't be doing unless you have a handset, and your call drops, that's a pothole. Right now the first fixes are finding those potholes, putting something up in them and actually broadcasting 4G from that small wireless facility.

He shared two wireless examples on the overhead. The one on the right is near Winsted's, next to it. The one on the left is a block away. These are two really good examples of the type of deployment we want to encourage. Getting back to your macro micro small wireless example, the small wireless antenna under Missouri law is only six (6) cubic feet. The macro tower is a full array of about ten (10) foot of antennas. They are significantly smaller. He pointed out two briefcase-size things; those are the battery powers for the antenna. Those are associated pole equipment. On the pole itself there are six (6) cubic foot antenna and two (2) briefcase-size batteries. He then shared bad examples on the overhead. This is what they want to discourage. These are from Mobility in California. Mobility has the contract to do all of Sprint's buildout. They haven't proposed things like this yet. The one they proposed a year and a half ago looked

more like our previous examples. These are things to be aware of and the previous regulations and what they attempt to stop.

Mr. Corcoran shared the laws that they have to deal with when dealing with small wireless facilities.

Mr. Murch asked about the location of the facilities and what they would do if there was no underground wiring and there wasn't a pole.

Mr. Corcoran said they would request to put up their own pole.

Mr. Murch asked if there could only be one carrier per pole.

Mr. Corcoran shared that is definitely something they will try to enforce as we don't want two of them stacked on top of each other. They could do that, they could put them to the sides, but we want one per pole on the top, if it has to happen at all. It is physically possible for them to do that but our code doesn't allow it.

Mr. Murch asked if our current code addresses these things.

Mr. Corcoran said that the code we have now wouldn't allow it. The code we have now is illegal starting January 14th (2019). We just haven't had anyone come in and do anything. Currently, when someone puts up a macro tower they come in to get a special use permit. We are no longer allowed to require special use permits. We can't have any zoning review at all. It has to be in our right-of-way codes.

Mr. Murch asked if we have any kind of concept in this nine (9) square miles of how much of it is underground versus above ground.

Mr. Corcoran shared that what they have been doing when providers come in, we have small wireless facilities, but they also have to lay fiber. We are actually encouraging underground facilities. If they do come in to get a new pole, we have laws about where that pole can go; spacing requirements of 150', there are additional design and concealment requirements. We know how much is underground and we are encouraging more to go underground. The goal for North Oak is essentially to not have anything above ground except light poles. He doesn't know if that is feasible at this point.

Some carriers have been receptive to putting their fiber underground. Some, AT&T, will not be. They use Southwestern Bell's statewide franchise that was granted to them in the 20's. They use that to go into all city right-of-ways without any permits or approvals. Mr. Corcoran covered the statutory items in FCC 18-133 and HB-1991. He shared that there are 500 pages of information in them. They go all the way back to the 1996 Telecommunications Act. Our more up-to-date ones are the FCC Declaratory Ruling in Third Order on FCC 18-133 and then Uniform Wireless Deployment Act, which is our Missouri law on this matter.

He went through the statutory items first. FCC 18-133 preempts any local legal requirements that effectively prohibit service including wireless infrastructure deployments. What happens is you look at the local code and state law and you look at FCC 18-133. If any of the local stuff is more burdensome on a provider, it is preempted by FCC 18-133. This was all thrown out by the Missouri legislature in the last legislative session, so our state law is stricter than city authority. There is also more language about what they consider effectively prohibiting. Materially inhibits or limits is their new kind of rule. With that they have also said that "expensive infrastructure". If we charge somebody \$1,000 per linear foot of stuff in our right-of-way, that's too much and that will materially inhibit and would fall under FCC 18-133. This

is the first time they have taken a monetary view of inhibiting the permission of service. There could possibly 540 of these within the city. If we charged everybody \$5,000 a piece, the carriers wouldn't be able to buildout. That is their argument. They made \$68 billion last year and he believes they would be able to afford it.

The other thing FCC 18-133 does is affects timelines. We have 60 days to review an application for the attachment of a small wireless facility; if they asked to attach to one of our city poles. The city only has 60 days to review all permits, buildings, right-of-ways, everything in 60 days. If they do a new structure, we have 90 days. The FCC order doesn't preempt zoning but those timelines alone preempt zoning. It would be extremely difficult to get a permit application in, review it on the staff level, notice out for a hearing for a special use permit, have that hearing, have the written report done and back to them within 60 days. The current one for new macro towers is 120 days. When Commissioner Piot put that in he knew exactly what he was doing. Not only locally in the state of Missouri but nationally, with what people were charging for attachment to city infrastructure, he disagrees with the FCC. He thinks it was more than reasonable for cities to charge a \$68 billion industry \$500 a month to put something on one of our poles that tax payers paid for. They didn't agree with him. So now our fees must be reasonably approximate to the costs the city incurs, objectively reasonable to pass to the applicant, and no higher than fees charged to competitors in similar circumstances. Reasonably approximate means however long it takes him or Alan or Austin time to review. Objectively reasonable means we can't pass on to them a fee for Scott having to oversee everybody. No higher than fees charged to competitors. There were some cities that were working deals with Verizon specifically. Two good examples that actually came to him were Verizon deployments. They were charging Verizon less because Verizon was doing (inaudible) and then charging AT&T more because AT&T was taking advantage of its position as a subsidiary of Southwestern Bell and putting up really bad deployments.

Our application fees can be \$500 for non-reoccurring fees. That would be the application fee and then our rate, which would be a yearly reoccurring fee, is \$100 for a thousand. We have our \$270, which would be our rate. That is what they view as presumptively reasonable. Now if providers want to put a small wireless facility on North Oak, or they want to put a small wireless facility in downtown Manhattan, they are paying \$270 max.

HB-1991 is a little bit more restrictive than FCC 18-133. It completely preempts the zoning authority as you will see here; "not subject to zoning review or approval" except under very limited circumstances which that would be in historic districts or places zoned primarily for single family prior to August 28th. It also sets timelines. Its timelines are even shorter than the FCC's timelines. The city has 15 days to review an application and to see if it is incomplete. If we don't say that it's incomplete within 15 days, it is deemed complete. We have 45 days to approve an application for an attachment and 60 days for a new facility. If we do not meet those timelines, it is deemed approved. If something gets lost in the mail and they can claim that it actually got here somehow, and it doesn't meet any of our requirements, they can just go put it up. We handle that in the ordinance, or try to at least.

Application fees are somewhat similar. The FCC is \$500 for five (5) which would be \$100 per small wireless facility. Here it is \$100 per small wireless facility, so the same. Then we have \$500 for a new pole. Our reoccurring fees are \$150, which is lower than the FCC even. Then for city facilities we can actually negotiate with them somewhat and charge them reasonable nondiscriminatory rates, fees and terms. He doesn't see them coming in to put something on City Hall when they can go on the light pole next to it for less and not have to deal with it.

We have some retained authority. The FCC lets the city use aesthetic requirements that are reasonable, no more burdensome than those on other types of infrastructure deployments, objective, and published in

advance. We have four (4) criteria; reasonable, objective, no more burdensome and published in advance. HB-1991 limited that even more. We can't have aesthetic requirements except for decorative poles. We can only have concealment requirements. He takes concealment to be less than aesthetic. Our concealment requirements can be reasonable, objective, and cost effective. For decorative poles, we can require the provider to try to meet the decorative element of the pole. He doesn't perceive them trying to go on the decorative poles. They can put up whatever pole they want 50 feet away and try to do that.

Undergrounding under the FCC has the same criteria as aesthetic requirements. He isn't sure if the FCC didn't understand the undergrounding requirements, but they said we couldn't require undergrounding of an antenna. HB-1991 allows us to deny co-locations and new poles if they don't meet our undergrounding requirements. There needs to be ability for them to appeal that. Under the current ordinance, the appeal would go to the City Engineer as they are the ones who understand the subject matter better than anyone else in the city. They still have to show good cause as to why they can't underground their antennas. Since Verizon has agreed to go underground, we always have them to back us up. If Verizon has gone underground then Sprint and T-Mobile come in and try to go above ground, our argument would be that if we let you go above ground then we are discriminating against Verizon because we made go underground, which is legal under Missouri right-of-way laws.

Spacing under the FCC is treated the exact same as aesthetic requirements. Under Missouri law we can deny a co-location or a new pole because of the failure to meet our spacing requirements. There needs to be an appeal process. That appeal would also go to the City Engineer. Our current spacing requirement in the ordinance is 150 feet. That is typical of what most cities are going with. We originally discussed 300 feet and mapped it out and realized that would have the effect of prohibiting the provision of wireless services within the city.

Mr. Corcoran ended the presentation and asked for any questions.

Mr. Markenson asked what we can require to go underground except wires.

Mr. Corcoran replied that is exactly what we can require is for the wires go underground. On high priority corridors, North Oak and 72nd Street, we might require vaults for the associated ground equipment. That is typically part of these. He shared a picture showing associated ground equipment on the overhead. The city did vaults for Google Fiber.

Mr. Markenson questioned if they can construct these towers in commercial and non-residentially zoned areas in the city's right-of-way.

Mr. Corcoran confirmed that was correct.

Mr. Markenson asked if we can control the spacing between them and certain concealment.

Mr. Corcoran confirmed that spacing, undergrounding and concealment are the three main areas of retained authority that we can use to control the aesthetics.

Mr. Markenson asked if, in Gladstone, most of the small cell facilities are on light poles.

Mr. Corcoran replied that there are no small cells in the city currently. There is a proposal from Mobility from a year ago that was a replacement pole. The city will encourage the replacement of the current wood light poles with the metal light poles. Part of the ordinance requires that the provider has a pre-

application meeting with the city and during that meeting we will try to sell them on doing metal poles. We can make it faster and cheaper.

Mr. Markenson asked if, in Gladstone, our cell phones go just through the macro towers.

Mr. Corcoran confirmed that is correct.

Mr. Markenson questioned if that would not be good in the future because they want more coverage.

Mr. Corcoran said that 5G signal doesn't go as far as 4G does. The macro tower serves an area of 2-3 miles. The small wireless, which does 5G, the 5G signal can only travel 2,000 feet. So they need more of those small 5G ones throughout the city and that is why they have done this.

Mr. Markenson confirmed that the existing macro towers don't have enough capacity.

Mr. Corcoran said they can't handle it. Their antennas can't produce 5G wireless signals that broadcast as far as necessary. If they were only on the macro towers, you would have 5G at the base of the pole and nowhere else.

Mr. Ebenroth asked how it would affect residential neighborhoods.

Mr. Corcoran replied that residential neighborhoods were still allowed to use our zoning review approval under Missouri law. From their conversations with most of the providers, AT&T is probably three years away from getting anything from them. Verizon is probably a 1 ½ to 2 years away. Sprint and T-Mobile, who knows; they aren't really proposing a lot of buildout. In our residential areas we are still going to do zoning review and approval in R1 Residential. That will probably look like an administrative review on the city's end because we still have the 45 and 60 day timelines. That is a very quick turnaround to organize everything. We will be a little bit stricter when they go into R1 and will probably require no associated ground equipment and require that it be a steel-side cobra-head with an antenna that is grey that matches the pole, runs in the middle of the pole, and has just those two boxes. AT&T is the one we have to be concerned about. Mike Chambers, who is their lobbyist, was at the last Council meeting and showed us some examples of what they have done in Independence. What they are doing is having Southwestern Bell through their statewide franchise put up a wood pole in a residential area, and then they are going on top and putting a black antenna on top it, and running cables down the side of it, and they have a big box that it is attached to.

Mr. Ebenroth confirmed that they won't be using existing light poles.

Mr. Corcoran shared that AT&T is the one that won't because Southwestern Bell is only charging them a dollar to go on their poles because it is the same company. Southwestern Bell has a state-wide franchise that was granted to them to build out telephone service in the state of Missouri in the 20's. It is still remains active even though multiple people have tried to get the franchise taken away.

Mr. Murch asked what kind of revenue is there for the city for this.

Mr. Corcoran said that if you do the \$150 times 540, around \$89,000 range at full build-out. What we were originally going to charge was \$500 so it would be significantly more than that. It might end up at full build-out be a revenue loser because they might be able to take down some of the macro towers that are on city water towers. They pay significantly more than \$150 a year to be on those. A bit of a revenue bump, probably not enough to cover the cost that Alan will spend reviewing this, and then potentially a revenue decrease in 5-10 years.

Mr. Murch asked what kind of liability is there to the city to have them there if somebody hits one or takes one out with their car.

Mr. Corcoran shared that we require that the carrier has insurance, and state law allows us to require that the carrier has insurance on the pole up to the sovereign immunity cap, \$2.8 million. If anybody hit that pole and the pole collapsed on them and they argued it was because the small wireless facility, the carriers insurance, that they have added the city to, would cover it and the city would not be held individually liable or their insurance would not be held liable.

Mr. Murch asked what happens in five years when this technology is advanced beyond all of this.

Mr. Corcoran stated that the hope is that in five years these get even smaller.

Mr. Murch said we would have all these poles sitting around and now we don't need any of them.

Mr. Corcoran shared that there are abandonment bonds in the ordinance so it will be up to \$75,000 of a bond that is held by the city. So if they abandon it and don't use it for a year, we provide them written notice, and the city can call on the bond and use the bond proceeds to take down the pole. The goal is to attempt to make them put street lights where we don't currently have street lights or where neighbors want street lights. If that does occur, the only thing we have to take down is the actual antenna and the boxes on the sides. We would keep the pole and claim it as city-owned at that point. The city owns about 1,000 poles and KCP&L owns the other 3,000 poles in the city. KCP&L is not subject to any of the law that we discussed tonight. It is not letting wireless providers go on their street lights, and is trying to require them to go just on to the power poles, the wood poles with the powerlines running on them. He feels that is a worse idea. He doesn't feel that contractors who aren't powerline contractors should be on poles working next to power lines. That is KCP&L's prerogative.

Mr. Murch shared that he is still unsure about when you say they are allowed 60 per square mile. He wasn't sure how we would measure a square mile. If he looks at North Oak and they put 60 of them per square mile down North Oak times four. That would be one every five feet.

Mr. Corcoran said we would deny all of those because it would violate the spacing requirement.

Mr. Murch said that basically every 150 feet down North Oak you could have a pole.

Mr. Corcoran shared that right now there is one every 200 feet.

Mr. Murch asked if that was on both sides of the street.

Mr. Corcoran said the east side currently has one every 200 feet. The entire point is that they are going to try to encourage co-locating on current city facilities and charging them less, making the timelines shorter, making the application fees shorter, to encourage city facilities. The only person that they have had any trouble with is AT&T. Verizon has already come in and showed us where they going to put their small wireless facilities. Their current plan is for five total on North Oak. They are all going on city light poles, everything is undergrounded.

Mr. Murch asked him to clarify that co-locating, you are talking about four carriers can put four antennas on one pole.

Mr. Corcoran said he is talking about one carrier on one pole. Co-location, previous to this year, meant you were putting an antenna on something that already has an antenna on it. Now, with small wireless,

co-location means they are putting an antenna on a current pole. That is what co-location means. Under our ordinance and under engineering and building codes, they can't do more than one. Under building codes he doubts that the engineering would work to put two on there. They aren't going to allow two on a pole. Unfortunately, our hands are tied here. They worked with our legislators to try to get a win. He was a member of the MML team that was talking with legislators drafting our model ordinances. Carriers have better lobbyists and they have a lot more. MML has two lobbyists; they brought on a third for this. Sprint probably has 10 in Jeff City.

Mr. Markenson shared that AT&T probably has 20 or 30.

Mr. Corcoran said that AT&T is the only one who has lobbyists specifically for local government. He has never seen that from another business. Ours is Mike Chambers. He does the Northland, St. Joe, and some of the east side of the metro. Sprint doesn't have any lobbyists that come to City Council meetings and talks. The idea is that they will be providing a new service that the citizens want, that the city, in the end wants. We don't want to be the only city in metro that doesn't have 5G. As long as they play by our rules and kind of do something that isn't atrocious, we are probably fine with it. We would have liked to not have these significant caps on our revenue on facilities and properties that the city and the citizens purchased. Here we are. FCC 133 has been called the largest corporate bailout in history because it saved the telecommunications industry close to \$600 million a year over the next 20-30 years. You can add that up to see the revenue loss to cities because of it.

Mr. Ebenroth asked it that would impact franchise taxes.

Mr. Corcoran said that cities are not allowed to charge franchises to telecommunications companies. We have business license taxes. We are seeing decreases in that and it is because, if you look at your phone bill, you will see that you're actual telephone service is about \$10 a month and that your data is about \$80 a month. The current argument from the carriers is that data is not telephone service. He thinks it's kind of crazy since the only way you access it is through your telephone. They have seen decreasing gross receipts for the past four years. There is currently a law suit that just went to the Missouri Supreme Court and we should be getting a decision here soon that hopefully is beneficial to cities and says that data is subject to gross receipts. If it is, the city of Gladstone would be the next city that is involved in litigation against Sprint, T-Mobile, all of those. If you look at the city's gross receipts, we are seeing a 20% decrease year over year. He doesn't think that anyone's phone bill has gone down 20%.

Mr. Markenson asked who the plaintiff is in that.

Mr. Corcoran said it is the cities of Aurora, Oak Grove, and Cameron. He knows it is those three because he also represents those three.

Mr. Markenson asked what attorneys put that together. He asked if it was Vogel.

Mr. Corcoran confirmed it was Dan Vogel. That litigation has been going on for seven (7) years. Their clients that are involved in that litigation hope that they get a decision at this point; that it's not kicked back down to a lower courts and then cities are involved in ten years of litigation over what is telephone service. Even if that lawsuit does turn out in favor of cities, Sprint, T-Mobile, AT&T and Verizon aren't going to start voluntarily making payments. They're not going to make back payments.

Mr. Markenson asked if they're asking for back taxes.

Mr. Corcoran said that they should be. Their lobbyists went down and had a statutory change that cities can only go back three years for back taxes on telecommunications.

Mr. Markenson said that is a lot of money.

Mr. Corcoran agreed. He said the general estimates they've seen from cities similar in size to Gladstone are about \$200,000 worth of underpayments in a year. There are some cities they represent where T-Mobile actually says they only collected \$15 in money that was subject to gross receipts. They actually had a \$.96 payment to a city of 10,000 people. That was pretty bold and daring.

Mr. Murch asked if there was any ancillary benefit to involving the 911 system.

Mr. Corcoran shared that currently there wasn't. Missouri is behind the times on the 911 system in general. The benefits that we'll see from 5G are connectivity, fewer dropped calls. The latency, when you pick up your phone and you click on something and it takes a little bit of time to load, that would eventually go down to zero. Once it goes to fixed wireless, which means they are your only wireless provider, you don't have Wi-Fi at your house, then the city would want to be one of the more connected cities so that businesses would use it, our citizens could use it. That's why you have actually seen Google Fiber has pulled back from their investment into actual hardline fiber. They are also repositioning to go to the fixed wireless arena. That could be potentially another carrier here.

Mr. Corcoran asked the Commissioners if they wanted to take a look at the new ordinance. It goes over exactly what they talked about here. The first section is our undergrounding and spacing requirements. The second section and the first section incorporate the "whereas" clauses that he drafted. The next section is our actual new article relating to small wireless facilities. It restates a lot of state law, but the key points to note are the concealment requirements and section 6.115.1402B; those are our concealment requirements. You will see we have requirements for concealment for the actual facility itself including shape and color. Then we have the associated pole equipment which does require it to be in a vault or for it to be green. Then replacement poles and we have our decorative poles stuff. The indemnification insurance and performance bond is the next section to take a look at. To try to get around our potential slip-ups where something gets by the 15, 45 or 60 day windows, "k" in that same section is our deemed approved facilities. "Should the city fail to act within the time required applicable law, any small wireless facility collocated on an existing structure or any installation, modification, or replacement of a utility pole shall be done in compliance with each and every provision of this article." He thinks they will argue the applicability of that. He will say that they will argue that this entire ordinance is in violation of every law that they have ever seen; that's what they do every time.

Mr. Markenson said they have lots of lawyers as well as lobbyists.

Mr. Corcoran said that when the city did its right-of-way code six months ago; this goes in the right-of-way code. This doesn't affect the zoning code because we can't have zoning reviewer approval, There is a catch-all where it does say "zoning authority retained" which would be our fallback if it goes over height requirements from state law and our ordinance, or is in a R1 residential district. That's when you, your authority, would step in. He seriously doubts we will do special use permits for those; just do the timelines. We might be back with you in four to five months to do some more code changes to the actual zoning ordinance. He doesn't know how often they're going to be going to R1 to start off with. R1 is typically not dense enough and they don't want to deal with the headaches. The thing he's learned over the past three years is that the carriers want to get this through as quickly as they can, with as minimal pushback as they can, for as cheap as they can. The main operative section is what he believes to be the most important is the last one, section 5 Fast-Track Small Wireless Facility Deployment. That is the city

encouraging these two examples. If you do something like these two, the city will approve it on an expedited 20 day timeline instead of a 45 or 60 day. We'll charge you less because there's no associated ground equipment so they're taking up less space on the right-of-way; there is less stuff for us to review. The rate for co-location goes down because they are using less of public property because there is no associated ground equipment. The kind of general requirements to that are:

- (1) Only one small wireless facility shall be permitted per structure in the rights-of-way;
- (2) The small wireless antenna and associated pole equipment shall be of the same or similar color as the pole on which it is to be attached;
- (3) All wires and cables associated with the small wireless facility shall be installed on the interior of the pole; and
- (4) No associated ground equipment shall be authorized; and
- (5) No small wireless facility shall be located in a manner which obstructs or causes a safety concern for vehicle or pedestrian traffic; and
- (6) If the proposed structure the applicant proposes to locate its small wireless facility is not structurally sound, but the director finds such to be a desired location, the director of public works can require the applicant to install a new substantially similar structure at its cost.

Mr. Corcoran believes there will a significant amount of replacements. The banners that the city has put up on poles, even those sometimes fail wind engineering. If a laminated piece of fabric makes the engineering unsound for poles, he assumes a six cubic foot antenna and an 8 cubic foot piece of pole equipment will also make it structurally unsound.

Mr. Corcoran asked for questions. He shared that it is a lot to process. He's had two years to process it. The Commissioners have had 50 minutes. He asked what they think of the ordinance. It isn't the typical zoning thing where a recommendation from the Commission is required. The Council would like to know their thoughts or potential recommendation on anything. They are looking at approval for the first meeting in March. There is a pending application where someone has reached out to the city inquiring on what city codes are regarding this and they didn't tell us where it is but they did send us their construction drawings and it would meet Fast-Track Small Cell Wireless. We don't know who it is. It's coming from a wireless infrastructure provider which is less favorable. We would actually like it if there were less of those people applying to the city because when they put an antenna up, the antenna cannot be used for two years. It is essentially an ugly thing in the right-of-way that provides no benefit. Under our ordinance we do require that it provides service within a year or they have to take it down.

Mr. Cookson appreciates the cleverness with which we are approaching it given the limitations.

Mr. Corcoran said that the example he has given other Boards, Commissions and City Councils is that typically cities regulate with a stick. You do something we don't like and we hit you with a stick so you stop doing it whether it's a fine or just saying no. Now we have to regulate with a carrot. We have to say you can do it cheaper and faster if you do it in a way that we at least kind of like.

Mr. Markenson asked for clarification that the new state law take affect this coming January.

Mr. Corcoran stated that it took affect January 1st but the city didn't have any pending applications so state law says that everybody had to adopt ordinances either two months after August 28th, or two months after a provider came in and requested. The interesting thing about that statute that said we had to do it within two months of August 28th was that statute itself didn't become effective until January 1st. As soon as we got any interest, which came in about two weeks ago, we immediately jumped up our timeline to try to get this done. The FCC order went effective January 14th. He expects more things to come from the FCC. The current chairman of the FCC is an ex-attorney for AT&T and lobbyist for the telecommunications industry as a whole. He won't be seeing things from the city's side. FCC 18-133 brought up an unpublished ruling by the FCC from twenty years ago and used that as the basis for the entirety of the order.

Mr. Corcoran asked if there was a recommendation from the Commission.

Mr. Markenson said they are all sort of nodding. To really do that, they would have to read the whole thing very carefully and they just received it tonight. He didn't think that anyone really . . .

Mr. Corcoran said he thought that what the Council wanted; that the approach and what they are doing and how we are going to do it was acceptable to the Commission. Unfortunately, the typical authority that the Commission has over wireless infrastructure deployment has essentially been cut due to HB-1991. Previous to this, all of these would have required a special use permits under city code. We would have been having special use permit hearings, five of them every month for the next five years.

10. Adjournment. Mr. Markenson motioned to adjourn; Mr. Cookson seconded.

Chair McGee adjourned the meeting at 6:55pm.

Respectfully submitted:

Cheryl Lamb, Recording Secretary

Approved as corrected _____

Jennifer McGee, Chair

Approved as submitted _____

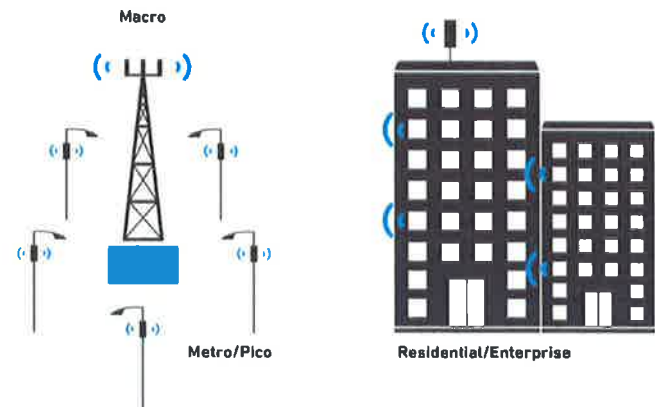
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PROVIDING LEGAL SOLUTIONS FOR LOCAL GOVERNMENTS

Small Cell Wireless – Generally

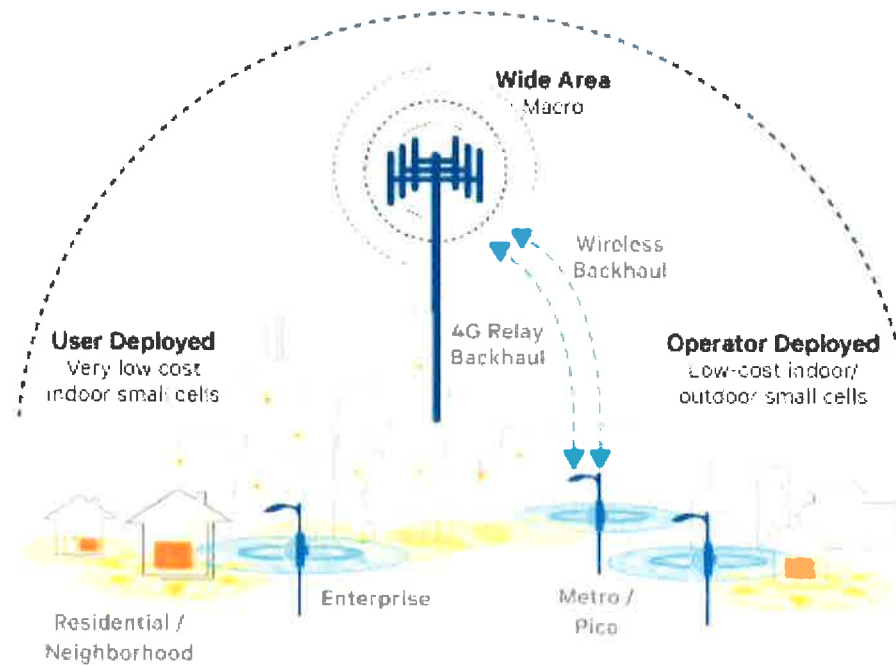


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Deployment Overview



Why so many?

Estimated Deployment

- 60-ish small cell per sq. mile per carrier in the next 5 years

Why?

- Reduce latency, increase capacity, limit coverage gaps, “bathroom coverage”, fixed wireless

Small Cell Wireless – Local Examples



Small Cell Wireless - Nightmare



Summary of Wireless Laws

- Two Federal Statutes
 - 1996 Telecom Act – 47 U.S.C 332(c)(7)
 - 2012 Spectrum Act – 6409(a) – 47 U.S.C. 1455(a)
- Three FCC Orders
 - FCC Declaratory Ruling – Shot Clock Rule – FCC 09-99
 - 2014 Wireless Infrastructure Order – FCC 14-153
 - FCC Declaratory Ruling and Third Report and Order – FCC 18-133
- Three Missouri Statutory Sections
 - Uniform Wireless Communications Infrastructure Deployment Act – Section 67.5090 *et seq.*, RSMo.
 - Uniform Small Wireless Facility Deployment Act – Section 67.5110 *et seq.*, RSMo.
 - Public Right-Of-Way – Section 67.1830 *et seq.*, RSMo

FCC 18–133 - Generally

- Limits cities' authority regarding the siting of small wireless facilities
“...preempt legal requirements that effectively prohibit service, including wireless infrastructure deployments.”
“...in determining whether a state or local law has the effect or prohibiting the provision of telecommunications services, it ‘consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal regulatory environment.”
- Sets timelines for the approval or denials of applications
“**60 days** for reviewing the application for attachment of a Small Wireless Facility using an **existing structure** and 90 days for the review of an application for attachment of a small wireless facility using a new structure.”

FCC 18-133 - Fees Generally

- “[F]ees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs.”
- Must be
 - Reasonably approximate to cost
 - Objectively reasonable to pass to applicant
 - No higher than fees charged to competitors in similar circumstance

FCC 18-133 – Application Fees

- “\$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation).”

FCC 18-133 – Recurring Fees

- “\$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally owned structures in the ROW”

HB 1991 – Generally

- Limits cities' authority regarding the siting of small wireless facilities

“...an authority shall permit a wireless provider, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way...” Section 67.5112.3, RSMo

- Sets timelines for the approval or denial of applications

“Within **fifteen days** of receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete.” Section 67.5113.3(7)

“An application for collocation shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within **forty-five days** of receipt of the application ... An application for installation of a new, modified, or replacement utility pole associated with a small wireless facility shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within **sixty days** of receipt of the application” Section 67.5113.3(8)

HB 1991 – Application Fees

- “...based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application ...” Section 67.5116.3(1), RSMo
- “The total fee for any application under subsection 3 of section 67.5113 for collocation of small wireless facilities on existing authority poles shall not exceed **one hundred dollars** per small wireless facility.” Section 67.5116.3(3), RSMo
- “The total application fee for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility shall not exceed **five hundred dollars per pole.**” Section 67.5113.3(4), RSMo

HB 1991 – Recurring Fees

- “The rate for collocation of a small wireless facility to an authority pole shall not exceed **one hundred fifty dollars** per authority pole per year.” Section 67.5116.4(1), RSMo
- “an authority shall authorize the collocation of small wireless facilities on authority wireless support structures and authority poles to the same extent, if any, that the authority permits access to such structure for other commercial projects or uses. Such collocations shall be subject to **reasonable and nondiscriminatory rates, fees, and terms** as provided in an agreement between the authority, or its agent, and the wireless provider.” Section 67.5114.2, RSMo

FCC 18-133 and HB 1991

City Authority Retained – Design

- FCC 18-133
 - “We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and public in advanced.”
 - “[A]esthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments..”
- HB 1991 Decorative Poles
 - “A wireless provider shall be permitted to replace decorative poles when necessary to collate small wireless facility, but any replacement pole shall reasonable conform to the design aesthetics of a decorative pole or poles being replaced.” Section 67.5112.6, RSMo
 - “An authority may deny a proposed ... small wireless facility... only if the action proposed in the application could reasonably be expected to... fail to comply with reasonably objective and documented aesthetics of a decorative pole and the applicant does not agree to pay to match the applicable decorative elements.” Section 67.5113.9(h), RSMo.
- HB 1991 - Concealment Requirements
 - “An authority may require a small wireless facility to comply with reasonable, objective, and cost-effective concealment or safety requirements adopted by the authority.” Section 67.5113.3(5), RSMo

FCC 18-133 and HB 1991

City Authority Retained - Underground

- FCC 18-133
 - "...a requirement that all wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals."
 - "... the same criteria discussed above in the context of aesthetics generally would apply to state or local undergrounding requirements.."
- HB 1991 – Section 67.5113.9(i), RSMo
 - An authority may deny a proposed collocation ... or installation, modification or replacement ... if the action proposed in the application could reasonably be expected to:
 - (i) Fail to comply with reasonable and nondiscriminatory undergrounding requirements contained in local ordinances ... 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 the 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 this section.

FCC 18-133 and HB 1991

City Authority Retained - Spacing

- FCC 18-133
 - “it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use”
 - “such requirements should be evaluated under the same standards for aesthetic requirements”
- HB 1991 – 67.5113.9(f), RSMo
 - An authority may deny a proposed collocation ... or installation, modification or replacement ... if the action proposed in the application could reasonably be expected to:
 - (f) Fail to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance ... Such spacing requirements shall not prevent a wireless provider from serving any location and shall include a waiver, zoning, or other process that addresses wireless provider requests for exception or variance and does not prohibit granting of such exceptions or variances.

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