

ORDINANCE NO. 3425

AUG 20 2018

AN ORDINANCE AMENDING CHAPTER 12.04 OF THE COLUMBIA  
MUNICIPAL CODE RELATED TO REGULATIONS FOR RIGHT-OF-WAY  
MANAGEMENT

  
City Clerk

**WHEREAS**, the City of Columbia ("City"), Monroe and St. Clair Counties, Illinois is a duly created, organized, and validly existing municipality of the State of Illinois under the 1970 Illinois Constitution and the laws of the State of Illinois, including particularly the Illinois Municipal Code, and all amendatory thereof and supplementary thereto; and

**WHEREAS**, the City has specifically been granted authority, including 220 ILCS 65/0.01 *et seq.*, to establish requirements for structures or equipment in the public right-of-way ("ROW") and the City desires to reaffirm its intent to regulate and enforce permitting requirements for the wireless communication facilities in the ROW; and

**WHEREAS**, the City Council's legislative findings include that: (a) the ROW is a unique and physically limited resource; (b) the ROW is critical to the travel and transportation of persons and property in the City; (c) the ROW is intended for public uses and must be managed and controlled consistent with that intent and can be partially occupied by Facilities and public service entities to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and (d) such findings require adoption of specific additional regulations to ensure coordination of users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of a maximum most efficient number of Right-of-Way Users that will serve the public interest; and

**WHEREAS**, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennas pursuant to its zoning powers established in 65 ILCS 5/11-13-1 *et seq.* and additionally pursuant to its general and specific police powers established by the 1970 Illinois Constitution and laws of the State of Illinois; and

**WHEREAS**, consistent with state and federal law and the City Council's legislative findings, the City Council desires to enact new regulations for small wireless facilities within the ROW and other pedestrian and vehicular ways.

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Columbia, Illinois as follows:

**Section 1.** The whereas clauses and findings therein are hereby specifically incorporated herein by reference.

**Section 2.** Chapter 12.04 of the Columbia Municipal Code is hereby amended by adding the following new Sections 12.04.170 to 12.04.230 in their entirety:

#### **12.04.170. Applicability; Preemption.**

- A. *Applicability.* Except as provided for herein, and where limited by applicable law, this Chapter shall apply to all Excavations and all use, construction, operation, and Maintenance of Facilities or structures in the Rights-of-Way of the City. No Person shall commence or continue with the operation of any Facilities or structures in the Rights-of-Way except as provided and in compliance with this Chapter. Because numerous types of users and uses of the Rights-of-Way may be subject to various or changing regulatory schemes under federal or state law, any such limitation or qualification that may be applicable to less than all users and uses of the Rights-of-Way are not duplicated herein, but are nevertheless incorporated herein, whenever application is so required by law, including but not limited to applicable provisions of state and federal law.
- B. *Preemption.* No provision of this Chapter shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any Section, Subsection, subdivision, sentence, clause, phrase, or portion of this Chapter 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.

#### **12.04.180. Definitions**

For purposes of this Chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

**ABANDONED FACILITIES:** Any equipment materials, apparatuses, devices, or Facilities that are:

- 1) Declared abandoned by the owner of such equipment or Facilities,
- 2) No longer in active use for a period of six months or more, and the owner of such equipment or Facilities fails to respond within thirty (30) days to a written notice sent by the City,
- 3) The owner allows a Franchise, License, or other written authorization to expire and fails to cure within thirty (30) days after notice, or
- 4) As otherwise may be defined by applicable law.

**AGL (Above Ground Level):** Ground level shall be determined by the average elevation of the natural ground level within a radius of fifty feet (50') from the center location of measurement.

**ANTENNA:** Any device that transmits and/or receives wireless radio waves for voice, data, or video communications purposes including, but not limited to, television, AM/FM radio, texts, microwave, cellular telephone, and similar forms of communications. The term shall exclude satellite earth station antenna less than two (2) meters in diameter (mounted within twelve feet (12') of the ground or building-mounted) and any receive-only home television antenna.

**APPLICANT:** Any Person who has applied for a Franchise, License, ROW Permit, or any permit

or other authorization to install, maintain, repair, or otherwise physically access Facilities in the ROW.

*CABINET*: A structure for the protection and security of communications equipment associated with one (1) or more Antenna where direct access to equipment is provided from the exterior and that has horizontal dimensions that do not exceed four feet (4') by six feet (6'), and vertical height that does not exceed six feet (6').

*CITY UTILITY POLE*: A Utility Pole owned or operated by the City in public Rights-of-Way.

*DIRECTOR*: The Director of Public Works or his/her designee or official acting in such capacity.

*EXCAVATION, EXCAVATING, or EXCAVATE*: Any act by which earth, asphalt, concrete, sand, gravel, rock, or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment, or explosives, except as excluded by applicable law.

*EXCAVATION PERMIT*: A permit authorizing Excavation for the construction or installation of Facilities in the City's Rights-of-Way.

*FAA*: The Federal Aviation Administration.

*FACILITY or FACILITIES*: Any equipment, installation, or structure located in the Rights-of-Way, including without limitation, cables, wires, lines, poles, towers, Antenna, conduit facilities, vaults, pedestals, transmitters, meters, fiber, foundations, and any other equipment, infrastructure, structures, or obstruction. Facilities shall not include mailboxes, lawful vehicular parking, or use of lawful minor incidental uses such as driveway aprons, private utility connections, or other incidental Facilities which may be permitted by License issued by the Director as provided herein.

*FACILITIES MAINTENANCE OR MAINTENANCE*: The construction, installation, repair, upgrade, or other physical access to the Facility in the Rights-of-Way that does not involve Excavation.

*FACILITIES MAINTENANCE PERMIT*: A permit issued by the City for the ROW User to provide Maintenance to its Facilities or otherwise perform work in the ROW that does not involve Excavation but requires physical access to the Facilities in the ROW.

*FCC*: The Federal Communications Commission.

*FRANCHISE or FRANCHISE AGREEMENT*: A binding and accepted ordinance for certain ROW Users to occupy the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, cable, telecommunications, sewer, or any other service to any Person or area in the City's limits and boundaries.

*LICENSE*: The executed agreement between the City and a Person to use and occupy the Rights-of-Way for the purpose of installing incidental temporary Facilities within the Rights-of-Way or incidental uses such as ingress and egress Facilities, lateral utility lines, or driveway aprons.

*PERSON*: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

*RATE*: A recurring charge.

*RIGHTS-OF-WAY OR "ROW"*: The area on, below, or above a public roadway, highway, street, or alleyway in which the City has an ownership interest or right of management, and including such adjacent areas within such public ways within such City control, except as may be limited by applicable law.

*RIGHTS-OF-WAY (OR "ROW") PERMIT*: An Excavation Permit and/or a Facilities Maintenance Permit.

*RIGHTS-OF-WAY (OR "ROW") USER*: All Persons and entities, whether an Illinois Commerce Commission registered entity or otherwise, owning, controlling, leasing, maintaining, using, or installing Facilities in the Rights-of-Way of the City, not otherwise expressly exempted. ROW User shall also include any entity defined by the Small Wireless Act as "Wireless Provider". To the extent permitted by law, ROW User shall not include the City.

*SHELTER*: A building for the protection and security of communications equipment associated with one (1) or more Antenna and where access to equipment is gained from the interior of the building. Human occupancy for office or other uses or the storage of other materials and equipment not in direct support of the connected Antenna is prohibited.

*SMALL WIRELESS ACT*: Public Act 100-0585, otherwise known as the Small Wireless Facilities Deployment Act.

*SMALL WIRELESS FACILITY*: A Wireless Communications Facility that meets both of the following qualifications:

- A. Each Antenna is located inside an enclosure of no more than six cubic feet (6 ft<sup>3</sup>) in volume or, in the case of an Antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet (6 ft<sup>3</sup>); and
- B. All other wireless equipment attached to a Utility Pole or Support Structure, associated with the Small Wireless Facility, is cumulatively no more than twenty-five cubic feet (25 ft<sup>3</sup>) in volume, calculated to the extent permitted by applicable law.

*SUPPORT STRUCTURE*: A free-standing structure such as a billboard or other structure designed to, or capable of, supporting Wireless Communications Facilities. A *Support Structure* shall not include a Utility Pole.

**UTILITY POLE:** A pole or similar structure that is used in whole or in part by a ROW User or for electric distribution, lighting, or traffic control. *Utility Pole* shall not include a Support Structure.

**WIRELESS COMMUNICATIONS FACILITY:** Any Antenna, Small Wireless Facility, Cabinet, Shelter, and Support Structure and associated equipment thereto.

#### **12.04.190 Franchise, License Required; General Requirements**

A. *Franchise Agreement or License Required.* Except where otherwise authorized or required by applicable law, no Person may own, control, lease, maintain, use, or install Facilities in the Rights-of-Way without a valid Franchise or License with the City as provided herein and as follows:

1. *Franchise.* A Franchise shall be obtained in conformance with all applicable Franchise procedures for any Rights-of-Way User seeking to use the Rights-of-Way for the purpose of providing, transporting, or distributing electricity, gas, water, steam, lighting, energy, cable, telecommunications, sewer, or any other service, or to place any Facilities into the Rights-of-Way as infrastructure for another ROW User, to the extent permitted by applicable law, to any Person or area within the City's limits and boundaries.
2. *License for Incidental Uses.* Persons desiring to install an incidental use, which includes installation of temporary structures or minor incidental uses in the Rights-of-Way, such as driveway aprons, ingress or egress facilities, and similar incidental uses, that utilize a small area of the Rights-of-Way and serves the principal structure, may be permitted without a Franchise Agreement pursuant to a License issued by the Director. The Director shall have discretion to establish such application, application fee, requirements, and conditions applicable to such uses consistent with the purposes of this Chapter or as otherwise established by law. Any Person granted a License hereunder shall be subject to the applicable requirements of this Chapter. Unless otherwise stated in the License, a License shall be for an indefinite term and shall be revocable at any time on written notice in the public interest by the City.

B. *Grant and Nature of Approval; Terms and Compensation.* The authority granted by the City in any Franchise Agreement or License shall be for non-exclusive use of the Rights-of-Way. Such grant does not in any way limit the continuing authority of the City through the proper exercise of its statutory powers to adopt and enforce ordinances necessary to provide for the health, safety, and welfare of the public. The City specifically reserves the right to grant, at any time, such additional Franchise Agreements or other rights to use the Rights-of-Way for any purpose and to any other Person, including itself, as it deems appropriate, subject to all applicable laws. The granting of any Franchise or License by the City shall not be deemed to create any property interest of any kind in favor of the ROW User, nor shall it create any relationship of agency, partnership, joint venture, or employment between the parties. Licenses may be approved by the Director on a non-discriminatory basis provided that the Person is in compliance with all applicable requirements. Each Franchise Agreement and License shall include terms of use and be deemed to incorporate the terms of this Chapter and other applicable laws of the City, except as may be expressly stated in such Franchise or

License. The City may require compensation for use of the Rights-of-Way or other public property as may be reasonably required by the City Council, subject to applicable law.

- C. *Condition Precedent to Right-of-Way Permit.* Unless otherwise required by applicable law, no Right-of-Way permit may be issued unless such person has a valid Franchise Agreement or License with the City that authorizes that Person's use of the Rights-of-Way. Unless prohibited by applicable law, in addition to any other reason provided herein, the Director may deny a ROW Permit to any Person that does not have a valid Franchise or License with the City.
- D. *Transferability.* Except as provided in this Chapter or as otherwise required by law, no Franchise, License, or ROW Permit may be transferred or assigned without the written application to and consent of the City based on the requirements and policies of this Chapter. The City shall not unreasonably withhold its consent as provided herein, but any costs incurred shall be paid by the ROW User to the extent not prohibited by applicable law. In the case of the City granting consent to transfer, the transferee shall be subject to the terms and conditions of this Chapter, and all terms and conditions of such transferred Franchise, License, or ROW Permit.
- E. *No Warranties.* The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-of-Way and shall not be liable for any damage therefrom. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Rights-of-Way User. The Rights-of-Way User shall be solely liable for any damages to Facilities or other property due to excavation or other Right-of-Way work performed prior to obtaining the location of all Facilities within the work area. The Rights-of-Way User shall not make or attempt to make repairs, relocation, or replacement of damaged or disturbed Facilities without the approval of the owner of the Facilities.
- F. *Use of City or Third-Party Facilities.* Unless otherwise specified in such Franchise or License, no Franchise Agreement or License shall grant the right to use Facilities owned or controlled by the City or a third party, and no such use shall occur, without the express written consent of such party (on file with the City and subject to other applicable requirements), nor shall any Franchise Agreement or License excuse such Person from first obtaining a pole attachment agreement or other express consent (which may be expressly provided for in a Franchise) for such right or use before locating on the Facilities controlled or owned by the City or a third party.
- G. *Lease Required for Public Lands.* Unless otherwise provided, use or installation of any Facilities in non-Rights-of-Way public property of the City shall be permitted only if a lease agreement or other separate written approval has been negotiated and approved by the City with such reasonable terms as the City may require, and subject to all applicable City Ordinances and Illinois statutes.

- H. *No Cause of Action Against the City.* A Rights-of-Way User shall have no damages remedy or monetary recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of any Franchise Agreement or License, or other written authorization or because of the enforcement thereof by said City, or from the use of the Rights-of-Way. Nothing herein shall preclude the Rights-of-Way User from seeking injunctive or declaratory judgment relief against the City where such relief is otherwise available and the requirements therefor are otherwise satisfied.
- I. *Compliance with Laws.* Each Rights-of-Way User shall comply with all applicable federal and state laws and regulations and rules as well as all City ordinances, resolutions, rules applicable building fire, electrical, plumbing, and mechanical codes and the local amendments thereto, and regulations heretofore and hereafter adopted or established. Rights-of-Way Users shall at all times be subject to the lawful exercise of the police powers of the City, including but not limited to all police powers regarding zoning, supervision of the restoration of the Rights-of-Way, building and safety regulations, and control of the Rights-of-Way. Installation of all Facilities in the Rights-of-Way are subject to and must be in compliance with all zoning, safety, and building code requirements. For applications for installation of wireless Facilities in the Rights-of-Way, (1) the most restrictive adjacent underlying zoning district classification shall apply, to the extent permitted by applicable law, unless otherwise specifically zoned and designated on the official zoning map, and (2) no application shall be submitted for approval without attaching the City's consent to use the Rights-of-Way for the specific construction application.
- J. *Indemnification.* Every Rights-of-Way User, as a condition of use of the Rights-of-Way, shall at its sole cost and expense fully indemnify, protect, defend (with counsel for the City acceptable to the City), and hold harmless the City, its municipal officials, officers, employees, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the Rights-of-Way User, its agents, representatives, employees, contractors, subcontractors, or any other Person for whose acts the Rights-of-Way User may be liable, in constructing, operating, maintaining, repairing, restoring, or removing Facilities, or use of the Rights-of-Way or the activities performed, or failed to be performed, by the Rights-of-Way User under this Chapter or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not, under any circumstances, relieve the Person from the duty to defend against liability or its duty to pay any judgment entered against the City or its agents. A ROW User shall also waive any claims that they may have against the City or its agents with respect to any damages, however caused, based on any theory of liability or other culpability. This indemnification shall survive the expiration or termination of any Franchise, License, or ROW Permit.
- K. *Liability Insurance.* Except as provided in this Chapter, each Rights-of-Way User shall provide, at its sole expense, and maintain during the term of a Franchise, commercial general

liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Illinois, and unless otherwise approved by the City, with a rating by A. M. Best of not less than "A," that shall protect the Rights-of-Way User, the City, and the City's officials, officers, and employees from claims which may arise from operations under a Franchise, whether such operations are by the Rights-of-Way User, its officers, directors, employees and agents, or any subcontractors of the Rights-of-Way User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Rights-of-Way User operations, products, services, or use of automobiles, or construction equipment, and shall also include workers' compensation insurance as required by Illinois law, and property insurance for all ROW User's property for its property's replacement cost against all risks. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall in no event be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with respect to its activities on the City's improvements or Rights-of-Way to afford minimum protection limits consistent with its requirements of other ROW Users' use of the ROW, including coverage for bodily injury and property damage. An endorsement shall be provided which states that the City is listed as an additional insured, that the insurer shall owe to the City a duty to defend the City for any and all claims related to the insured's operation of Facilities or other structures within the City, and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director.

If the Person is self-insured to the satisfaction of the City, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. The City reserves the right to waive any and all requirements under this Subsection when deemed to be in the public interest. A copy of the liability insurance certificate, or other proof of compliance if otherwise requested by the City, shall be delivered by the Rights-of-Way User to the City Clerk.

- L. *Rights-of-Way User Responsible for Costs.* The Rights-of-Way User shall be responsible for all reasonable costs borne by the City that are directly associated with Rights-of-Way User's installation, Maintenance, repair, operation, use, and replacement of its Facilities in the Rights-of-Way that are not otherwise accounted for as part of a permit fee, to the extent permitted by law. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request of the Rights-of-Way User.
- M. *Use of Existing Facilities Required; Exceptions.* All new Facilities or structures shall collocate on available existing poles or within existing conduit, trenches, or other Facilities to minimize unnecessary use of Rights-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 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.

- N. *Subordinate Use.* The ROW User's use shall be, in all situations, subordinate and subject to public municipal use. In situations where multiple users are in the same location, first the municipal use shall have priority followed by Persons with a valid and current Franchise or License with the City, followed by all others.
- O. *No Interference.* Every ROW User shall construct and maintain its Facilities so as not to interfere with other users of the Rights-of-Way. The ROW User shall not interfere with or alter the Facilities of the City or other ROW User without their consent and shall be solely responsible for such. Except as may otherwise be provided or as determined by the Director, the ROW User shall, prior to commencement of work, execute a City-approved resident-notification plan to notify residents affected by the proposed work. All construction and maintenance by the ROW User or its subcontractors shall be performed in accordance with industry standards. All Facilities and other structures shall be installed and located to cause minimum interference with the rights and convenience of property owners, ROW Users, and the City. Facilities and other structures shall not be placed where they will disrupt or interfere with other Facilities, structures, or public improvements or obstruct or hinder in any manner the various utilities serving the residents and businesses in the City or public improvements. Above-ground Facilities, where permitted, shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise. When reasonable and necessary to accomplish such purposes, the Director may require as alternatives to the proposed work either less disruptive methods or different locations for Facilities consistent with applicable law. To the extent permitted by applicable law, failure to remedy the interference as required by this Subsection shall constitute a public nuisance.
- P. *Forfeiture of Franchise and Privilege.* In case of failure on the part of the ROW User, including its successors and assigns, to comply with any of the provisions of this Chapter or a Franchise or License, or if the ROW User, its successors and assigns should do or cause to be done any act or thing prohibited by or in violation of this Chapter or the terms of the authorization of such use, or otherwise loses authority to provide its service in the City, the ROW User, its successors and assigns shall forfeit all rights and privileges permitted by any Franchise or License, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City declares the forfeiture or revocation of a Franchise or License, it shall first serve a written notice upon the Person setting forth in detail the neglect or failure complained of, and the Person shall have thirty (30) days thereafter, or such other reasonable period established by the Director, in which to cure the default by complying with the conditions of the such Franchise or License and fully remedying any default or violation. If at the end of such period, the City determines that the conditions have not been complied with and that the Person did not reasonably and in the public interest require more than the established time to cure the default, the City shall take action by an affirmative vote of the City Council present at the meeting and voting to terminate the Franchise or License, setting out the grounds upon which said authorization is to be forfeited or revoked. Nothing herein

shall prevent the City from invoking any other remedy or from declaring immediate forfeiture where the default is incapable of being cured by the ROW User, including where such defaults or violations have repeatedly occurred.

- Q. *No Waiver.* No action or omission of the City shall operate as a future waiver of any rights of the City under this Chapter. Except where rights are expressly granted or waived by a ROW Permit, Franchise, or License they are reserved, whether or not expressly enumerated.

#### **12.04.200      Application for Franchise Required**

- A. *Application Form.* An application for a Franchise Agreement, shall be provided to the City on City forms and shall include all such information as is required by this Section and as determined necessary by the Director. The ROW User shall be responsible for accurately maintaining the information in the application during the term of any Franchise and shall be responsible for all costs incurred by the City due to the failure to provide or maintain as accurate any application information required herein.
- B. *Application Deposit Fee.* To the extent permitted by applicable law, an application deposit of \$500.00, or as otherwise determined by the Director, is hereby established and shall be submitted with the application, which shall be utilized to at least partly offset the City's costs in reviewing and issuing a Franchise, consistent with applicable law; any amount not used by the City for its actual lawfully reimbursable costs will be refunded upon request after execution of a Franchise. If applicable, the Applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an appropriate Franchise Agreement that may reasonably exceed the application deposit amount.
- C. *Standard for Approval or Renewal.* In reviewing an application for a new or renewal Franchise, the City may consider prior conduct of the Person in performance of its obligations or compliance with the City's ordinances in the past, or the existence of any outstanding violations or deficiencies. The City may deny or condition any Franchise where the proposed use would interfere with the public use of the Rights-of-Way or otherwise conflict with the legitimate public interests of the City to fulfill the requirements and objectives of this Chapter or as otherwise provided by law. All Franchises shall be approved by ordinance or resolution of the City Council and applications shall be decided on a non-discriminatory basis and shall be approved, conditioned, or denied based on compliance with all applicable requirements herein, and conformance with applicable law and the public interest.
- D. *Approval Process.* After submission by the Applicant of a duly executed and completed application, deposit fee, and executed Franchise as may be provided by the Director or as modified by the Director in review of the specific circumstances of the application, all in conformity with the requirements of this Chapter and all applicable laws, the Director shall submit such Franchise to the City Council for approval. Upon determining compliance with this Chapter, the City Council may authorize execution of the Franchise (or a modified agreement otherwise acceptable to the City consistent with the purposes of this Chapter) and

such executed Franchise shall constitute consent to use the Rights-of-Way; provided that nothing herein shall preclude the rejection or modification of any executed Franchise submitted to the City to the extent applicable law does not prohibit such rejection or modification, including where necessary to reasonably and in a uniform or non-discriminatory manner reflect the distinct engineering, construction, operation, Maintenance, public work, or safety requirements applicable to the Person or use.

#### **12.04.210 Location, Design, and Mapping of Facilities**

- A. *Review Required.* The design, location, and nature of all Facilities shall be subject to the review and approval of the Director. Such review shall be on a non-discriminatory basis in application of City policy and approvals shall not be unreasonably withheld, to the extent permitted by applicable law. City height limitations, applicable zoning restrictions, and general City policies with regard to all users of the Rights-of-Way shall also be applicable to all Facilities. The Director may establish such regulations or policies as may be deemed necessary or appropriate to affect this provision.
- B. *Underground Facilities Required; Exceptions.* No Person may erect, construct, or install new Utility Poles or other Facilities above the surface of the Rights-of-Way without the written permission of the City based on good cause established by Applicant and found by the City, unless the City's authority has been pre-empted by state or federal law. Good cause may be shown by demonstrating the following:
1. There exists other Utility Poles or Support Structures, proximate to the area, that are located above ground. For purposes of showing good cause under this factor, evidence of good cause for new Utility Poles shall only be compared to existing Utility Poles, evidence of good cause for new Support Structures shall only be compared to existing Support Structures;
  2. The proposed underground installation is impossible, impractical, or not technically feasible; or
  3. When, in the City's judgment, the proposed Utility Pole installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the proximate area without adversely affecting safety.

Where reasonable and appropriate and where adequate Rights-of-Way exists, the ROW User shall place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible. The requirements in this Subsection B shall not prohibit the replacement of existing Utility Poles.

- C. *Use of Existing Poles/Facilities Required; Exceptions.* All new Facilities or structures shall collocate on existing Utility Poles or within existing conduit, trenches, or other Facilities to minimize unnecessary use of Rights-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 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). To the extent permitted by applicable law, where existing Utility Poles or Support Structures 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 also the costs associated with utilizing such existing Facilities.

- D. *Wireless Antennas and Facilities.* Pursuant to City authority to properly manage the limited space in the City's Rights-of-Way, minimize obstructions and interference with the use of the Rights-of-Way by the public, and to ensure public safety, preserve property values, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, Wireless Communications Facilities shall be permitted in the Rights-of-Way only in compliance with the requirements applicable to other Facilities and users in the Rights-of-Way, and subject to the supplemental requirements set forth in this Section for wireless Antennas and Facilities. Any Wireless Communications Facilities authorized in the Rights-of-Way shall be only as authorized in a binding approved Franchise Agreement which expressly authorizes attachment to the City's Utility Poles and/or Support Structures, a pole attachment agreement, or other written authorization with the City and subject to approval, denial, or condition relating to location, design, height, appearance, safety, specifications for use of City structures, and such building or other regulations, except as may be limited by applicable law.
- E. *General Conditions.* Any Wireless Communications Facility in the Rights-of-Way shall be authorized only for Persons or ROW Users that have a current, unexpired, and lawful Franchise Agreement with the City pursuant to 12.04.190.A.1. All Wireless Communications Facilities shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the City to address changing infrastructure, technology, and uses of the Rights-of-Way and/or City Facilities, to the extent permitted by applicable law.
- F. *Small Wireless Facilities.* All Small Wireless Facilities in the Rights-of-Way shall comply with the following requirements, in addition to any other design, safety, spacing, or construction requirements outlined in this Section:
1. The maximum height of a Small Wireless Facility that is collocated on a Utility Pole or Support Structure shall be no more than ten feet (10') above the Utility Pole or Support Structure that such Small Wireless Facility is collocated;
  2. All written design standards, currently in effect or as may be hereafter adopted, applicable to the City's Utility Poles or Support Structures shall be followed, along with all stealth, concealment, and any other aesthetic requirements or written design plan

applicable to such Utility Poles or Support Structures on record, adopted, or in effective within the City, including such stealth, concealment, or other aesthetic requirements for historic landmarks or within a district currently, or hereafter, zoned historic;

3. The Small Wireless Facility and any associated equipment permitted shall be painted the same or similar color as the Utility Pole or Support Structure upon which the Facility and/or equipment is collocated. If good cause is shown for ground-mounted equipment, such ground-mounted equipment associated with a collocated Small Wireless Facility shall be of such design, including color and size, such that it maximally blends in to the built environment of the proximate area;
4. Only one Small Wireless Facility may be collocated on a Utility Pole or Support Structure;
5. New or replacement Utility Poles or Support Structures may not exceed 45 feet AGL, to the extent permitted by applicable law, without a Special Use Permit approved by City Council pursuant to Section 17.40.010 of the Columbia Municipal Code;
6. To the extent permitted by applicable law, all ROW Users must comply with any requirements imposed by any contract between the City and a private property owner that concerns, or relates to, design or construction standards for Utility Poles located in the Rights-of-Way;
7. To the extent permitted by applicable law, new Utility Poles and Support Structures shall follow Subsection B of this Section, such that no new Utility Poles or other Support Structures may be installed within the City's Rights-of-Way without the prior approval of the City for compliance with design and aesthetic requirements. This requirement does not prohibit modification of existing Utility Poles or Support Structures to allow for collocation of Small Wireless Facilities. Replacement Utility Poles shall be permitted as required by applicable law. In such a circumstance requiring a new or replacement pole for a Small Wireless Facility, such new or replacement Utility Poles shall be at the cost of the ROW User.
8. No ground-mounted equipment associated with the Small Wireless Facility will be permitted. Waiver to this requirement may be granted by the City Council upon good cause is shown that the Applicant requires ground-mounted equipment to utilize the site for a Small Wireless Facility. If good cause is shown permitting such ground-mounted equipment for a Small Wireless Facility, no other ground-mounted equipment shall be allowed for that particular Applicant, or for the particular ROW User if Applicant provides only infrastructure-related services for the ROW User, within two hundred fifty feet (250') of that approved ground-mounted equipment;
9. The proposed collocation, modification, or replacement of Utility Poles or Support Structures where approved pursuant to this Chapter, shall cause only the minimum possible interference with the use of the Rights-of-Way and shall cause only the minimum possible impact upon, and interference with, the rights and reasonable

convenience of the property owners who adjoin said Rights-of-Way;

10. The height of all portions of the Small Wireless Facility shall be located at least eight feet (8') above ground level so as not to interfere with pedestrian or vehicle traffic;
11. No portions of the Small Wireless Facility shall extend horizontally from the surface of the Utility Pole or collocated Support Structure more than sixteen inches (16") so as not to interfere with pedestrian or vehicle traffic;
12. If the proposed Utility Pole or Support Structure the Applicant proposes to locate its Small Wireless Facility on is not structurally sound, but the Director finds such site to be a desired location, the Director can require the Applicant to install a substantially similar Utility Pole or Support Structure, the Applicant's cost; and
13. Notwithstanding the maximum size descriptions which define Small Wireless Facility contained in this Ordinance or otherwise contained in applicable law, the Applicant for the proposed installation or collocation shall endeavor to use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or Cabinets then in use by the ROW User, regardless of location, for the particular application.

The City Council may further waive one or more of these requirements upon good cause shown by the Applicant, and provided a showing that the waiver is the minimum necessary to accomplish the purposes of this Subsection, or as otherwise required by applicable law. The burden of proof for any waiver shall be wholly on the Applicant and must be shown by clear and convincing evidence.

G. *New Structures.* Wireless Communications Facilities shall not be permitted in the Rights-of-Way on new structures, provided that if evidence warranting an exception is provided by the Applicant pursuant to Section 12.04.210.B, the City Council may grant an exception authorizing a new structure for a Wireless Communications Facility if it also determines on a non-discriminatory basis such proposed application is in the public interest in light of the purposes of this Section, and provided such use and location has received prior, separate zoning authorization to the extent permitted by applicable law. In such circumstances where any new wireless Support Structure application is permitted in the Rights-of-Way, such use shall be subject to reasonable regulations or conditions and including any applicable specifications, compensation, and other terms established by the City in such approval or agreement as necessary or appropriate to preserve the purposes of this Section and Subsection.

H. *All other Wireless in Rights-of-Way.* Any Wireless Communications Facility proposed to be located on a Utility Pole or Support Structure, but not meeting the requirements of *Subsections E. General Conditions* or *F. Small Wireless Facilities*, above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Section, only upon approval by the Council upon a determination by the Council that such Wireless Communications Facility is:

1. In the public interest to provide a needed service to persons within the City,
  2. Cannot feasibly meet all of the requirements of a "Small Wireless Facility" but varies from such requirements to the minimum extent necessary,
  3. Does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved,
  4. Does not create any unreasonable safety risk, and
  5. Complies with all zoning, Rights-of-Way, and other applicable requirements.
- I. *Permit Application Requirements for Wireless Communications Facilities.* Any application for a ROW Permit, including one or more Wireless Communications Facility, including but not limited to Small Wireless Facilities, shall include all of the requirements of this Code, as well as written proof of consent of landowner (copy of the Enforceable Franchise Agreement, or other written consent of the City) and of structure owner (document authorizing use of the Utility Pole or Support Structure). Additionally, for the installation of Small Wireless Facilities, the following information shall be required to constitute a completed Application:
1. A site-specific structural integrity report for each Utility Pole and Support Structures, and for City Utility Poles and City-controlled Support Structures, a make-ready analysis prepared by a Structural Engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
  2. Specifications and drawings prepared by a Structural Engineer for each Small Wireless Facility;
  3. Location of each proposed Small Wireless Facility which is proposed to be installed, with photographs of the immediate surrounding areas depicting where the Small Wireless Facility would be mounted on its associated structure;
  4. The equipment types and model numbers for the Antennas and all other equipment associated with the Small Wireless Facility;
  5. A proposed schedule for the installation and completion for each Small Wireless Facility, if such application were approved;
  6. Certification that the collocation proposed in the application complies with the Small Wireless Act, and the City's requirements for collocation, to the extent permitted by applicable law, including the existence of an enforceable Franchise Agreement between the City and the ROW User, undergrounding requirements, design requirements, and all requirements of this Section 12.04.210, to the best of the Applicant's knowledge; and
  7. All application fees to the extent permitted by law. All application fees to the City

shall be non-refundable. If such application requires replacement Utility Pole(s), such cost of the replacement Utility Pole(s) will also be included in the application.

Failure to provide the application fee(s) as required by the City's Code, or as otherwise provided for by the Small Wireless Act or other law, will prevent the exercise by the applicant of any "deemed approved" remedy which may be provided for in any applicable law. The City's application fees shall be the maximum permitted by applicable law, including but not limited to the Small Wireless Act, as may be hereafter amended, and shall be effective until an ordinance establishing such lesser or alternative amount is passed by City Council.

- J. *Sight Triangle Maintained.* All ROW Users shall comply with the requirements of sight triangles and nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede the vision within the triangular area formed by the Rights-of-Way lines and a line connecting them at points thirty feet (30') from their point of intersection or at equivalent points on a private street.
- K. *Installation and Maintenance of Facilities.* Each ROW User shall maintain its Facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements. If Excavation or Facilities Maintenance is being done for the ROW User by another Person, a subcontractor or otherwise, the ROW User shall be responsible for ensuring that the Excavation or Facilities Maintenance of said Person is performed consistent with its ROW Permit and applicable law (including that the contractor shall be properly licensed under the State of Illinois and local ordinances) and shall be responsible for promptly correcting acts or omissions by said Person.
- L. *Collocation Completion Deadline.* Any collocation for a Wireless Communications Facility for which a ROW Permit is granted shall be completed within 180 days after the issuance of the permit, measured as the day in which the Director or his/her designee approves the application and affixes his/her signature to such ROW Permit. The City and the ROW User may agree to extend this period, or if a period of delay is caused by make-ready work for a City pole or by the lack of commercial power or backhaul availability at the proposed location, if the ROW User has made a request within 60 days after the issuance of the ROW Permit for commercial power or backhaul services. In no case shall an extension be inferred via conduct or waiver, and may only be granted in writing, expressly stating the nature of such extension, signed by the City. Any additional extension cannot exceed 360 days after issuance of the ROW Permit. All ROW Permits issued for which the work authorized is not completed shall be deemed void and require a new application to the City.
- M. *Reservation of Right of Denial.* Nothing herein shall prohibit a denial of a Wireless Communications Facility application, notwithstanding any contrary requirement or provision of this Chapter, if applicable law at that time would otherwise not prohibit such denial, including due to change of law, invalidation, inapplicability or expiration of the Small Wireless Act, or otherwise.



N. *Wireless Facility Compensation Requirements.* Unless otherwise established by the City Council or applicable law, compensation to the City for use of City Rights-of-Way or structures for wireless Facilities, shall be as follows unless otherwise lawfully provided for in the Franchise authorizing such use:

1. *City Structures.* If a Small Wireless Facility is to be collocated on a City-owned structure acceptable for such use by the City, a Franchise, or other written authorization such as a pole attachment agreement, shall be required with terms including insurance, indemnification, and an annual rate of \$200.00 per attachment, or such other compensation as may be lawfully provided for in such Franchise or authorization, (the "Attachment Rate"), shall be paid to the City.
2. *Timing of Payment.* Unless otherwise agreed to in writing, all Small Wireless Facility Attachment Rate payments shall be due annually within on January 1 of each year. The Attachment Rate payment shall not be pro-rated or otherwise reduced based on the date of attachment to City infrastructure. Payment for linear feet of Facilities, to the extent not preempted by applicable law, shall be as provided in such Franchise or as otherwise required in the City Code. Payment of all other fees as required by this Code or applicable Franchise shall be on a monthly basis, within thirty (30) days after the end of each such month.
3. *Interest of Late Payments and Under Payments.* If any fees or rates required by the Chapter, including all Attachment Rates, or any portion thereof, is not postmarked or delivered on or before the due date, interest on the payment and interest on the unpaid balance shall accrue from the due date until received, on a monthly basis, at the rate of one and one-half percent (1.5%) of the total amount past due or at such other lower rate as may be required by applicable law.
4. *Fee Statement; Retroactive Adjustments.* Each payment of the fees or rates required by this Chapter, including the Attachment Rate payments, shall be accompanied by a statement, certified as true, showing the manner in which the Rights-of-Way fee was calculated including the total number of feet of Rights-of-Way occupied by the Rights-of-Way User's Facilities and number of Small Wireless Facilities collocated on City infrastructure in the Rights-of-Way, number of Small Wireless Facilities which the ROW User is paying for, and any applicable penalties or interest payments which may have accrued as required. If any statement is determined to understate the payment owed, then such additional amount owed shall be paid with a corrected statement, including interest on said amount as provided herein. No refund, credit, or offset shall be granted for any claimed payment or overstatement of the amount due or certification of Small Wireless Facilities or linear feet of Facilities reported, provided that a corrected payment or reported may be filed prior to any accrual of interest on the original payment.
5. *No Accord and Satisfaction.* No acceptance by the City of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim of the City.

6. *Maintain Records.* Rights-of-Way Users shall at all times maintain complete and accurate books of account and records of the business, ownership, and operations of the Rights-of-Way User with respect to the Facilities in a manner that allows the City to determine whether the Rights-of-Way User has properly calculated its required payment in compliance with this Section. Should the City reasonably determine that the records are not being maintained in such manner, the Rights-of-Way User shall correct the manner in which the books and/or records are maintained so that the Rights-of-Way User comes into compliance with this Section. All financial books and records which are maintained in accordance with FCC regulations and the regulations of any governmental entity that regulates utilities in Illinois, and generally accepted accounting principles shall be deemed to be acceptable under this Section. Such books and records shall be maintained for a period of at least five (5) years.
7. *Right of Inspection.* The City or its designated representatives shall have the right to inspect, examine, or audit, during normal business hours and upon seven (7) calendar days' notice, all documents, records, or other information that pertains to the Facilities within the Rights-of-Way and/or Rights-of-Way User's payment obligations. In addition to access to the records of Rights-of-Way User for audits, upon request, Rights-of-Way User shall provide reasonable access to records necessary to verify compliance with the terms of this Section.
8. *Fees, Rates, and Compensation not a Tax.* The fees, Attachment Rates, and costs provided for in this Section, and any compensation charged and paid for the use of the Rights-of-Way as provided for in this Section, are separate from, and additional to, any and all federal, state, City, or other local taxes as may be levied, imposed, or due.

#### **12.04.220 Jurisdiction, Inspection, Stop Work Orders, Appeals, and Penalties.**

- A. *Inspections.* All work and Facilities shall be subject to inspection by the City and the supervision of all federal, state, and local authorities having jurisdiction in such matters to ensure compliance with all applicable laws, ordinances, departmental rules and regulations, and the ROW Permit.
- B. *Stop Work Orders.* The Director shall have full access to all portions of the work and may issue stop work orders and corrective orders to prevent unauthorized work or substandard work as established herein. Except in cases of an emergency or with approval of the Director, no work may be done in violation of a stop work order issued by the Director.
- C. *Repairs when Defective.* All violations of the standards and requirements herein shall be corrected within the time specified in the issuance of a written notice to correct. Action to correct violations which require immediate action shall be taken upon notification to the Person by the City. Every Person failing to comply with the oral or written notice shall be deemed in violation of this Chapter. If the action is not taken within the time period specified by notice and in addition to any other remedy, the Director may have the violation, including but not limited to, the existence of mud or debris on the Rights-of-Way,

immediately remedied and the City's costs shall be reimbursed by the ROW User through the surety or otherwise. Nothing in this Subsection shall prevent prosecution of violation of this Chapter in the absence or in addition to the issuance of notice of violation.

- D. *Appeals.* Unless otherwise provided herein or by any other governing ordinance or law, any person aggrieved by a decision, fee, or requirement established or made pursuant to this Chapter shall, prior to seeking any judicial or statutory relief, if any, file a written appeal of any such decision, fee, or requirement with the City Council within fifteen (15) days of such decision or imposition of such fee or requirement specifying this provision and including specific details of the alleged claim or grievance, and an evidentiary hearing shall be held on such appeal by the City Council or its designee to render a final decision. Nothing herein shall deny or preclude any additional applicable appeal remedy that may be granted and required by federal or state law after such decision.
- E. *Penalties.* In addition to any other penalties and remedies for violations that may exist in law or equity, any Person that violates any provision of this Chapter shall be subject to such penalties as set forth in Section 1.16.010 of the Columbia Municipal Code per day for each and every day the violation exists or continues.

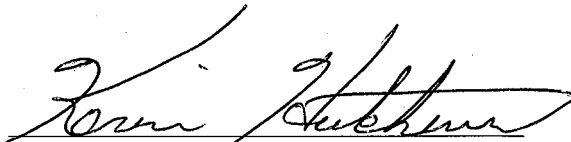
#### **12.04.230 Reservation of Rights.**

In addition to any rights specifically reserved to the City by this Chapter, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit, or other authorization granted under this Chapter, and as may be authorized by the 1970 Illinois Constitution or any other authority applicable to regulation of the use of the Rights-of-Way. Notwithstanding anything to the contrary set forth herein, the provisions of this Chapter shall not infringe upon the rights of any Person pursuant to any applicable state or federal statutes, including, but not limited to any right that may exist to occupy the Rights-of-Way.

**Section 3.** This Ordinance shall take effect and be in force from and after its passage as provided by law.

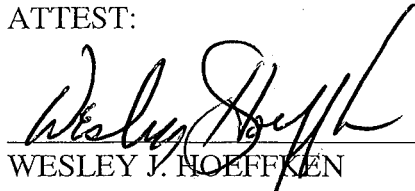
PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF AUGUST 2018.

By:



KEVIN B. HUTCHINSON  
MAYOR

ATTEST:



WESLEY J. NOEFFKEN  
CITY CLERK