

LEGISTAR #55033 - Body

DRAFTER'S ANALYSIS: This ordinance would create, to the extent allowed by Federal and State laws and regulations, a wireless telecommunications facility permit.

There has been an increased demand to place small cell wireless facilities in the right-of-way on existing or new infrastructure, which demand is being driven to address the cellular data needs of the public and the forthcoming deployment of "5g" cellular networks. This new technology is based upon the deployment of a vast network of "small" wireless facilities throughout the coverage area. Several different providers have already contacted the City about the placement of these facilities in the right-of-way, collocated on existing poles, on new poles and even on City-owned infrastructure outside of the right-of-way. The City currently does not separately regulate small cell facilities, but telecommunication carriers are required to comply with Section 10.05, MGO, when placing facilities in the right-of-way.

In 2018, the Federal Communication Commission released FCC-18-133, an order interpreting federal law that limits state and local regulation of small cell placement in the right-of-way based upon federal preemption grounds. Under federal law and the order, municipal regulations are preempted if they prohibit or have the effect of prohibiting the provision of telecommunications service or personal wireless service. The order states that it is an "effective prohibition" on such service if a local regulation "materially limits or inhibits any competitor's or potential competitor's ability to compete in a fair and balanced legal and regulatory environment." This "effective prohibition" test applies to the City's regulations applicable to these type of installations, including application deadlines, fees, and other placement or aesthetic requirements. While this order is being appealed, it went into effect on January 15, 2019, and the City must comply with it.

The intent of this ordinance would be to exercise the City's authority to regulate the placement and maintenance of wireless facilities in the right-of-way to the fullest extent provided for by federal and state law. The demand for such right-of-way use is expected to increase significantly in the near future and this ordinance will provide a better framework, consistent with the requirements of federal law, for the City to exercise regulatory authority over the placement and maintenance of these facilities. Of note, under the ordinance the City Engineer will be tasked with administering this permit, which is consistent with the City Engineer's existing authority over use of the right-of-ways by registered utilities under Sec. 10.05. The ordinance will be enforceable by City Engineering, Building Inspection, the Street Superintendent, and Traffic Engineering, which is consistent with other similar right-of-way ordinances. Permit fees will need to be determined and established by the Board of Public Works, keeping in mind the presumptive reasonable fee levels established by the FCC. In addition, the City will need to establish aesthetic standards that are consistent with the order (which standards must apply to all utility facilities in the right-of-way). Finally, this ordinance notes that the City may enter into agreements to allow collocation of small cell facilities on City-owned or City-controlled infrastructure (street lights, traffic signals, etc.). However, such collocation is not required, nor is it provided for by this ordinance. Any such use of City owned infrastructure would have to be separately approved by the Council either by agreements or by a general ordinance applicable to all providers. Of note, the FCC orders significantly limit the fees that the City may charge for locations on City-owned or City-controlled infrastructure.

In order to give the City sufficient time to develop the permit fees, the aesthetic standards, and the wireless regulations called for by the Ordinance, the effective date of this ordinance is being delayed to August 1, 2019.

The Common Council of the City of Madison do hereby ordain as follows:

1. Create Section 10.053 of the Madison General Ordinances entitled "Wireless Telecommunications Facilities in the Right-of-Way" as follows:

"10.053 WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

- (1) Definitions. For the purposes of this Section, the following definitions apply:

Administrator means the City Engineer, or his or her designee.

Application means a formal request, including all required and requested documentation and information, submitted by an Applicant to the City for a wireless permit under this Section.

Applicant means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

Base Station means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

Eligible Facilities Request means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

FCC means the Federal Communications Commission.

Registrant has the same meaning as set forth in Section 10.05(1)(b).

Right-of-way means the surface and space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, terrace, shoulders, side slopes, and public sidewalk in which the City has an interest, including any other dedicated rights-of-way for travel purposes.

Small Wireless Facility, consistent with 47 C.F.R. § 1.6002(l), means a facility that meets each of the following conditions:

1. The structure on which antenna facilities are mounted is fifty (50) feet or less in height, or is no more than 10 percent taller than other adjacent structures, or is not extended to a height of more than 50 feet or by more than ten (10) percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;
2. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than twenty-eight (28) cubic feet in volume;
4. The facility does not require antenna structure registration;
5. The facility is not located on Tribal lands; and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

Support Structure means any structure capable of supporting wireless telecommunications equipment.

Tower means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

Underground areas means those areas in the City identified by the Administrator where public utility poles, wires, cables and lines located in the right-of-way, other than those of a high voltage transmission line as that term is defined in Wis. Stat. § 196.491, are either located underground, scheduled to be undergrounded, or required to be installed underground. Underground areas include, specifically, underground utility districts established under Sec. 19.16(6).

Utility Pole means a structure in the right-of-way designed to support electric,

telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole. City-owned street lights, traffic signals and other poles are not utility poles.

Wireless Infrastructure Provider means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

Wireless Permit or Permit means a permit issued pursuant to this Section and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

Wireless Regulations means those regulations adopted pursuant to Paragraph (5)(b)1. to implement the provisions of this Section.

Wireless Service Provider means an entity that provides wireless services to end users.

Wireless Telecommunications Equipment means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

Wireless Telecommunications Facility or Facility means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

Definitions in this Section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this Section and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

- (2) Purpose. In the exercise of its police powers, the City has priority over all other uses of the right-of-way. The purpose of this Section is to provide the City with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the City's obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The City recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the City. The City also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Section shall be interpreted consistent with those provisions. This Section is intended to be complimentary to Section 10.05.

- (3) Scope.
- (a) Applicability. Unless exempted by Subdivision (b) below, every registrant who wishes to place a wireless telecommunications facility in the right-of-way, modify an existing wireless telecommunications facility in the right-of-way or maintain an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Section.
- (b) Exempt Facilities. The provisions of this Section, other than Subsections (10 to (13), shall not be applied to applications for the following:
1. Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.
 2. Installation of a mobile cell facility for a temporary period in connection with an emergency or event, but no longer than required for the emergency

or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

3. Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the City. See Subsection (14) below.
 4. Placement or modification of a wireless telecommunications facility by City staff or any person performing work under contract with the City.
 5. Modification of an existing wireless telecommunications facility that does not require a street excavation permit under Section 10.05 or a street occupation permit under Section 10.055, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.
- (4) Nondiscrimination. In establishing the rights, obligations, and conditions set forth in this Section, it is the intent of the City to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situations, and legal status of each applicant or request for use of the right-of-way.
- (5) Administration.
- (a) Administrator. The Administrator is responsible for administering this Section.
 - (b) Powers. As part of the administration of this Section, the Administrator may:
 1. Adopt wireless regulations governing the placement, modification and maintenance of wireless telecommunications facilities in addition to but consistent with the requirements of this Section, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.
 2. Interpret the provisions of the Section and the wireless regulations.
 3. Develop forms and procedures for submission of applications for wireless permits consistent with this Section.
 4. Collect any fee required by this Section.
 5. Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.
 6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.
 7. Issue notices of incompleteness or requests for information in connection with any wireless permit application.
 8. Coordinate and consult with other City staff, committees, and governing bodies to ensure timely action on all other required permits under Subsection (6)(b)8. below.
 9. Subject to appeal as provided in Subsection (10), determine whether to grant, grant subject to conditions, or deny an application.
 10. Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.
- (6) Application.
- (a) Format. Unless the wireless regulations provide otherwise, the applicant must submit an application, as well as any amendments or supplements to the application or responses to requests for information regarding an application, to the Administrator on forms approved by and in a format acceptable to the Administrator.
 - (b) Content. In order to be considered complete, an application must contain:
 1. All information required pursuant to the wireless regulations.
 2. A completed application cover sheet signed by an authorized

- representative of the applicant, listing all standard permit conditions.
3. The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.
 4. A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.
 5. A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Within ten (10) days of submission of the application, the Administrator may require the applicant to submit before and after three hundred sixty (360)-degree photo simulations for each facility covered by the application. Failure to provide these photos within 10 days of request shall be considered non-responsive and the application shall be considered incomplete.
 6. Proof that the applicant has mailed to the owners of all property within three hundred (300) feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the City for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include:
 - a. The proposed location of the facility;
 - b. A description and scale image of the proposed facility; and,
 - c. An email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.
 7. A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.
 8. To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, street occupancy permits, and excavation permits), with all engineering completed and with all fees associated with each permit.
 9. A sealed report by a professional engineer registered in the State of Wisconsin that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.
 10. Payment of all required fees, including any unpaid fees owed by the applicant to the City under this Section.
 11. If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the City from complying with any deadline for action on

an application.

12. If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the City and detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station. Within ten (10) days of submission of the application, the Administrator may require the applicant to submit before and after three hundred sixty (360)-degree photo simulations for each eligible facility request covered by the application. Failure to provide these photos within 10 days of request shall be considered non-responsive and the application shall be considered incomplete.
 - (c) Waivers. Requests for waivers from any requirement of this Subsection shall be made in writing to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the City will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.
 - (d) Fees. Applicant must provide an application fee and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be established by the Board of Public Works and reviewed periodically to ensure that they accurately reflect the City's costs to review applications under this Subsection and do not exceed any applicable federal or state thresholds.
 - (e) Public Records. Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the City shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator's determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The City shall not be required to incur any costs to protect the application from disclosure and makes no representations of such confidential treatment.
- (7) General Standards.
 - (a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Section and the wireless regulations, in addition to the requirements of any other applicable law or regulation.
 - (b) Regulations. The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Section are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Section and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.
 - (c) Standards.
 1. Wireless telecommunications facilities shall be installed and modified in a manner that:
 - a. Minimizes risks to public safety;
 - b. Ensures that placement of facilities on existing structures is within the tolerance of those structures;
 - c. Avoids placement of aboveground facilities in underground

- areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;
- d. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;
 - e. Ensures that the City bears no risk or liability as a result of the installations; and
 - f. Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.
2. No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.
 3. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.
 4. Notification Requirements. Any wireless telecommunications facility placed or maintained in the right-of-way under this Section must include visible identifying information, including the name of the permit holder, a way for the permit holder to identify the location of the facility, and an emergency contact number. The Administrator may provide sample notifications that meet the requirements of this section in the wireless regulations.
 5. Aesthetic Standards. The applicant shall demonstrate that a proposed wireless telecommunications facility complies with the City's aesthetic standards in place at the time of application.
- (d) Standard Permit Conditions. All wireless permits under this Section are issued subject to the following minimum conditions:
1. Compliance. Obtaining a permit for a wireless telecommunication facility under this Section does not relieve a permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other City, County, State, or Federal rules, laws or regulations. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who does the work. The permittee shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules, including those requirements of Sections 10.05 and 10.055.
 2. Term. Except as provided in Paragraph 3, a wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five (5) years from the date of issuance unless revoked pursuant to Subdivision (9)(b).
 3. Start Work. Work to install a permitted facility shall commence within twelve (12) months and be completed no later than fifteen (15) months from issuance of a permit under this Section. Failure to comply with this requirement shall result in the expiration of the permit, unless the Administrator, upon application by the permittee and a showing of good cause, grants additional time for the work to commence or be

- completed.
4. Contact Information. The permittee shall at all times maintain with the City accurate contact information for the permittee and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.
 5. Emergencies. The City shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.
 6. Adverse Impacts on Adjacent Properties. The permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
 7. Radio Frequency Emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.
 8. General Maintenance. The wireless communications facility and any associated structures shall be maintained in a safe, neat and clean manner and in accordance with all approved plans and conditions of approval.
 9. Graffiti Removal. All graffiti on facilities shall be removed at the sole expense of the permittee within forty-eight (48) hours after notification from the City.
 10. Relocation. At the request of the City pursuant to Subsection (11) and Sec. 10.05(15), the permittee shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way. A relocated wireless telecommunications facility will require a new permit under this Section.
 11. Abandonment. The permittee shall promptly notify the City whenever a facility has not been in use for a continuous period of sixty (60) days or longer and must comply with Subsection (12).
 12. Restoration. A permittee who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Subsection (13).
 13. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete records in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.
 14. Indemnification. By accepting this permit, the permittee agrees to hold harmless, defend, and indemnify the City, its officers, officials, employees and agents, from and against all claims, suits, liability, damages, expenses and penalties arising from the permittee's activities under this permit, whether caused by or contributed to by the negligence of the City, its officers, officials, employees and agents.
 15. Insurance. The permittee shall be required to furnish a Certificate of Insurance, providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees named as additional insureds. The insurance shall include contractual liability coverage, apply on a primary and non-contributory basis, and

minimum limits of one million dollars (\$1,000,000) per occurrence. The Risk Manager reserves the right to require higher limits and other coverage terms and conditions at his/her discretion. Permittee shall keep required insurance in full force and effect throughout the term of the wireless permit. This insurance condition may be waived or modified if in conflict with federal or state law, and in those instances where the Risk Manager, in consultation with the City Attorney's Office, determines that this requirement can be waived or modified.

- (e) Special Conditions. The Administrator may add special conditions to a permit issued under this Section that are reasonably necessary to protect the public's health, safety and welfare, including after the issuance of the permit, provided such special conditions are not contrary to any federal, state or local law or regulation.
- (8) Application Processing.
- (a) Rejection for Incompleteness. Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.
 - (b) Processing Timeline. Wireless permit applications (including applications for other permits under Paragraph (6)(b)8 necessary to place or modify the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended or established from time-to-time.
 - (c) Written Decision. In the event that an application is denied or approved with special conditions under Subdivision (7)(e), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
- (9) Expiration and Revocation.
- (a) Expiration. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permittee must either:
 - 1. Remove the wireless telecommunications facility; or,
 - 2. Submit an application to renew the permit at least ninety (90) days prior to its expiration. The facility must remain in place until the renewal application is acted on by the City and any appeals from the City's decision are exhausted.
 - (b) Revocation for Breach. A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within thirty (30) days of receipt of written notice from the City. All costs incurred by the City in connection with the revocation, removal, and right-of-way restoration shall be paid by the permittee.
 - (c) Failure to Obtain Permit. Unless exempt under Subdivision (3)(b), a wireless telecommunications facility installed without a wireless permit after the effective date of this ordinance must be removed within 30 days of receipt of written notice from the City. All costs incurred by the City in connection with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.
 - (d) Change in Ownership. Permits under this section are not transferrable. Upon the sale or change of ownership of any wireless telecommunications equipment permitted under this Section, the new owner shall, within 30 days, notify the City of the change in ownership and apply for a permit for the facility.
- (10) Appeal. In the event the Administrator denies an application for a wireless permit, imposes a special condition on the permit under Subdivision (7)(e), or revokes a permit under Subdivision (9)(b), the Administrator shall inform the person, in writing, of the reasons for the determination by mailing a copy of the notice to the address of the person

as shown on the application. The person may appeal this decision as provided for under this Subsection.

- (a) Form of Appeal. Appeals of the Administrator's decision shall be made to the Board of Public Works. Such appeal must be made in writing to the City Clerk, and must inform the Board of the reasons why the person believes the decision to be in error.
 - (b) Timing of Appeal. Appeals that involve eligible facilities requests must be filed within three (3) business days after the mailing of the notice. All other appeals shall be filed within 10 days after mailing of the notice. Failure to timely appeal this decision shall result in automatic approval of the denial, special condition or revocation without further action by the Administrator or the Board of Public Works.
 - (c) Hearing. Within 30 days after receipt of the appeal, or as soon thereafter as the Board of Public Works holds a meeting, the Board shall hold a hearing at which the person and the Administrator may present and question witnesses and present oral and written argument.
 - (d) Decision of the Board. Within twenty (20) days after the hearing, the Board shall cause to be issued a written decision which shall affirm, reverse or modify the determination of the Administrator, and state the reasons for this decision that are supported by the record.
 - (e) Appeal of the Board's Decision. Appeal of the Board of Public Works' decision shall be by Certiorari to Circuit Court and shall be commenced within 30 days of the date of the decision sought to be reviewed.
 - (f) Decision Deadline. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.
- (11) Relocation. Except as otherwise prohibited by state or federal law, a permittee must promptly and at its own expense, with due regard for seasonal working conditions, maintain, support, protect or relocate any of its wireless telecommunications facilities in the right-of-way whenever the City requests such removal and relocation pursuant to Subsection 10.05(15).
- (12) Abandonment.
- (a) Cessation of Use. In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permittee must promptly notify the City and do one of the following:
 - 1. Provide information satisfactory to the Administrator that the permittee's obligations for its facilities under this Section have been lawfully assumed by another permittee.
 - 2. Submit to the Administrator a proposal and instruments for dedication of the facilities to the City. If a permittee proceeds under this provision, the City may, at its option:
 - a. Accept the dedication for all or a portion of the facilities;
 - b. Require the permittee, at its own expense, to remove the facilities and perform the required restoration under Subsection (13); or
 - c. Require the permittee to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Subsection (13).
 - 3. Remove its facilities from the right-of-way within one year and perform the required restoration under Subsection (13), unless the Administrator waives this requirement or provides a later deadline.
 - (b) Abandoned Facilities. Facilities of a permittee who fails to comply with Subdivision (a) and which, for one year, remain unused, shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option:
 - 1. Abate the nuisance and recover the cost from the permittee or the

City Traffic Engineer, or her/his designee.

Section 10.05, Occupancy of Rights-of-Way; Section 10.053, Wireless Telecommunications Facilities in the Right-of-Way; Section 10.055, Occupancy of Streets or Other Public Areas; Section 10.057, Facility Access Permit.”

4. This ordinance will be effective on August 1, 2019.

EDITOR'S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.