

CITY OF LAUDERDALE

ORDINANCE NO. 19-02

**AN ORDINANCE TO ENACT A NEW CHAPTER OF THE CODE OF ORDINANCES RELATING TO SMALL WIRELESS FACILITIES, ESTABLISHING GENERAL STANDARDS, A PERMITTING PROCESS, GENERAL PERMITTING CONDITIONS, AND OTHER REQUIREMENTS.**

**WHEREAS**, it is anticipated that Wireless Providers will increasingly rely on accessing the Public Right-of-Way of the City of Lauderdale, Minnesota (the “City”) to Collocate Small Wireless Facilities in order to provide improved service to their subscribers; and

**WHEREAS**, it is anticipated that Wireless Providers will more heavily depend on obtaining use of public infrastructure in the Public Right-of-Way, such as Utility Poles and other Wireless Support Structures, due to a much greater number of antennas being required to provide next generation wireless services; and

**WHEREAS**, it is anticipated that the increased number of antennas will result in economic benefits to the City and its residents; and

**WHEREAS**, the City desires through the passage of this ordinance to develop a process that will allow Wireless Providers to rapidly deploy Small Wireless Facilities while maintaining reasonable standards for the Public Right-of-Way within the City; and

**WHEREAS**, it is necessary and beneficial for the health, safety and welfare of the community to update the City’s zoning regulations for the Collocation of Small Wireless Facilities and installation or replacement of new Wireless Support Structures to accommodate Small Wireless Facilities; and

**WHEREAS**, it is important to accommodate the growing need and demand for telecommunications services while protecting the character of the City and its neighborhoods; and

**WHEREAS**, there is a need to establish standards for location, aesthetics, and compatibility for Small Wireless Facilities, Wireless Support Structures, and their uses; and

**WHEREAS**, there is a need to encourage the availability of affordable, high-speed internet and cellular telephone access for businesses and residents, acknowledging that a growing number of businesses are conducted from remote or off-site locations, that educational institutions increasingly incorporate online and distance learning methodologies, and that government participation and emergency service to the general public are enhanced by fast and reliable cellular and home internet connectivity; and

**WHEREAS**, there have been recent changes to the mandates of the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, and other applicable federal and

state laws, including, but not limited to, Minnesota Statutes Sections 237.162 and 237.163, that require the City to update its wireless regulations; and

**WHEREAS**, a mechanism for the permitting of Small Wireless Facilities, Micro Wireless Facilities, and distributed antenna systems telecommunication uses is in the best interest of the citizens of the City;

**THE CITY COUNCIL OF THE CITY OF LAUDERDALE, RAMSEY COUNTY MINNESOTA ORDAINS:**

SECTION I. Section 7-8-4 of Title 7, Chapter 8 of the Lauderdale City Code shall be amended by adding the following subsection D:

D: A permit issued under this Chapter does not authorize the collocation of a small wireless facility or the installation or replacement of a wireless support structure. To collocate a small wireless facility or install or replace a wireless support structure in the public right-of-way, a person must obtain a small wireless facility permit pursuant to the city of Lauderdale City Code Chapter 7-9.

SECTION II. Title 7 of the Lauderdale City Code is hereby amended to add new Chapter 9 as follows:

**CHAPTER 9**

**SMALL WIRELESS FACILITIES**

**SECTIONS:**

- 7-9-1: Purpose
- 7-9-2: Definitions
- 7-9-3: Small Wireless Facility Permit Applications
- 7-9-4: Establishment of General Standards
- 7-9-5: Small Wireless Facility Application Review Process
- 7-9-6: Small Wireless Facility Permit Conditions
- 7-9-7: Small Wireless Facility Permit Term
- 7-9-8: Denial or Revocation of a Small Wireless Facility Permit
- 7-9-9: City Inspection of a Small Wireless Facility or Wireless Support Structure
- 7-9-10: Abandonment
- 7-9-11: Removal of a Small Wireless Facility or Wireless Support Structure
- 7-9-12: Appeals
- 7-9-13: Insurance
- 7-9-14: Indemnification and Defense of City
- 7-9-15: Fees and Costs
- 7-9-16: Severability

### **7-9-1: PURPOSE**

- A) General Purpose. The purpose of this Chapter is to establish specific requirements for obtaining a Small Wireless Facility Permit for the installation, mounting, modification, operation, and replacement of Small Wireless Facilities and installation or replacement of Wireless Support Structures by commercial Wireless Providers on public and private property, including in the Public Right-of-Way. A Small Wireless Facility Permit issued under this Chapter does not abrogate any other requirements imposed under another Title of the City Code of the City of Lauderdale, including, but not limited to, those requirements imposed by Title 8 Chapter 7 and Title 10 of the City Code of the City of Lauderdale.
- B) This Chapter does not apply to any Wireline Facilities, including Wireline Backhaul Facilities. A Wireless Provider must obtain a right-of-way permit pursuant to Title 7, Chapter 8 or other applicable authorization for use of the Public Right-of-Way to construct, install, replace, or modify any Wireline Backhaul Facility, such as fiber optic cable. The granting of a Small Wireless Facility Permit pursuant to this Chapter is not a grant of such authorization.

### **7-9-2: DEFINITIONS**

In this Chapter, the following terms shall have the meaning ascribed to them below:

- A) “Administrator” shall mean the city administrator or their designee.
- B) “Applicable Law” shall mean all applicable federal, state, and local laws, codes, rules, regulations, orders, and ordinances, as the same be amended or adopted from time to time.
- C) “Applicant” shall mean any Person submitting a Small Wireless Facility Permit Application under this Chapter.
- D) “City” shall mean the City of Lauderdale, Minnesota.
- E) “Collocate” or “Collocation” shall mean to install, mount, maintain, modify, operate, or replace a Small Wireless Facility on, under, within, or adjacent to an existing Wireless Support Structure that is owned privately or by the City.
- F) “Days” shall be counted in calendar days unless otherwise specified. When the day, or the last day, for taking any action or paying any fee falls on Saturday, Sunday, or a Federal holiday, the action may be taken, or the fee paid, on the next succeeding secular or business day.
- G) “Decorative Pole” shall mean a Utility Pole owned, managed, or operated by or on behalf of the City or any other governmental entity that: (a) is specifically designed and placed for an aesthetic purpose; and (b)(i) on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than: (A) a Small Wireless Facility, (B) a specialty designed informational or directional sign; or (C) a temporary holiday or special event attachment; or (ii) on which no appurtenance or attachment has been placed, other than:

- (A) a Small Wireless Facility, (B) a specialty designed informational or directional sign; or (C) a temporary holiday or special event attachment.
- H) “Design District” shall mean any district within the City within which architectural design elements are required.
- I) “Excavate” shall mean to dig into or in any way remove, physically disturb, or penetrate a part of a Public Right-of-Way.
- J) “FCC” and “Commission” shall mean the Federal Communications Commission.
- K) “Historic District” shall mean a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically during the period of significance but linked by association or function.
- L) “Micro Wireless Facility” shall mean a Small Wireless Facility that is no larger than twenty-four (24) inches long, fifteen (15) inches wide, and twelve (12) inches high, and whose exterior antenna, if any, is no longer than eleven (11) inches.
- M) “Obstruct” shall mean to place a tangible object in a Public Right-of-Way so as to hinder free and open passage over that or any part of the Public Right-of-Way.
- N) “Permittee” shall mean a Person that has been granted a Small Wireless Facility Permit by the City.
- O) “Person” shall mean any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. “Person” shall not include the City.
- P) “Public Right-of-Way” shall mean the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easement of the City.
- Q) “Small Wireless Facility Permit” shall mean a permit issued by the City authorizing the installation, mounting, maintenance, modification, operation, or replacement of a Small Wireless Facility or installation or replacement of a Wireless Support Structure in addition to Collocation of a Small Wireless Facility on the Wireless Support Structure.
- R) “Small Wireless Facility” shall mean: (a) a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and (ii) all other wireless equipment associated with the Small Wireless Facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services,

and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than twenty-eight (28) cubic feet in volume; or(b) a Micro Wireless Facility.

- S) “Utility Pole” shall mean a pole that is used in whole or in part to facilitate telecommunications or electric service. It does not include a traffic signal pole.
- T) “Wireless Facility” shall mean equipment at a fixed location that enables the provision of Wireless Service between user equipment and a wireless service network, including: (a) equipment associated with Wireless Service; (b) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and (c) a Small Wireless Facility. “Wireless Facility” does not include: (a) Wireless Support Structures; (b) Wireline Backhaul Facilities; or (c) Coaxial or fiber-optic cables (i) between Utility Poles or Wireless Support Structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.
- U) “Wireless Provider” shall mean a provider of Wireless Service, including, but not limited to, radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and which permits a user generally to receive a call that originates and/or terminates on the public switched network or its functional equivalent, regardless of the radio frequencies used.
- V) “Wireless Service” shall mean any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using Wireless Facilities. Wireless Service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).
- W) “Wireless Support Structure” shall mean a new or existing structure in a Public Right-of-Way designed to support or capable of supporting Small Wireless Facilities, including, but not limited to, a Utility Pole or a building, as reasonably determined by the City.
- X) “Wireline Backhaul Facility” shall mean a facility used to transport communications data by wire from wireless facility to a communications network.

### **7-9-3: SMALL WIRELESS FACILITY PERMIT APPLICATIONS**

- A) Application Form. The Administrator shall develop and make publicly available a form Application. To the extent possible, the Administrator shall allow for Applications to be consolidated pursuant to this Section. A complete Application must be submitted for each Small Wireless Facility Permit desired.
- B) Consolidated Applications. A Wireless Provider may apply for up to 15 Small Wireless Facility Permits in a Consolidated Application, provided all Small Wireless Facilities in the Consolidated Application are located within a two-mile radius, consist of substantially similar equipment, and are to be Collocated on similar types of Wireless Support Structures. The City shall review a Consolidated Application as allowed by this Chapter.

If necessary, the applied for Small Wireless Facility Permits in a Consolidated Application may be approved or denied individually, but the City may not use the denial of one or more permits as a basis to deny all Small Wireless Facility Permits in a Consolidated Application. Any Small Wireless Facility Permits denied in a Consolidated Application shall be subject to a single appeal.

- C) Information Not Required. The City shall not require an Applicant to provide any information that:
1. Has previously been provided to the City by the Applicant in a Small Wireless Facility Permit Application, if the Applicant provides specific reference to the previous Application containing the information sought by the City and the previous information remains unchanged; and
  2. Is not reasonably necessary to review a Small Wireless Facility Permit Application for compliance with generally applicable and reasonable health, safety, and welfare regulations, and to demonstrate compliance with applicable Federal Communications Commission regulations governing audio frequency exposure, or other information required by this Chapter.

#### **7-9-4: ESTABLISHMENT OF GENERAL STANDARDS.**

- A) General Standards. The City Council shall establish and approve by resolution a set of standards for the installation, mounting, maintenance, modification, operation, or replacement of Small Wireless Facilities and placing new or replacement Wireless Support Structures in the Public Right-of-Way applicable to all Permittees under this Chapter (the “General Standards”). The General Standards shall include, but not be limited to, information to be required in a Small Wireless Facility Permit Application, design standards, construction standards, aesthetic standards, a form Application, permitting conditions, insurance and security requirements, and Rates and Fees.
- B) Design Standards. Any design standards established by the Administrator shall be: (a) reasonable and nondiscriminatory, and (b) include additional installation and construction details that do not conflict with this Chapter, including, but not limited to, a requirement that: (i) an industry standard pole load analysis be completed and submitted to the City, indicating that the Wireless Support Structure to which the Small Wireless Facility is to be attached will safely support the load, and (ii) Small Wireless Facility equipment on new and existing Wireless Support Structures be placed higher than fifteen (15) feet above ground level. The Administrator shall additionally include the following in any design standards established under this Chapter:
1. Any Wireless Support Structure installed in the Public Right-of-Way after May 31, 2017 may not exceed fifty (50) feet above ground level, unless the City agrees to a greater height, subject to local zoning regulations, and may be subject to separation requirements in relation to other Wireless Support Structures.
  2. Any Wireless Support Structure replacing an existing Wireless Support Structure that is more than fifty (50) feet above ground level may be placed at the height of

the existing Wireless Support Structure, unless the City agrees to a greater height, subject to zoning regulations.

3. Wireless Facilities constructed in the Public Right-of-Way after May 31, 2017 may not extend more than ten (10) feet above an existing Wireless Support Structure in place as of May 31, 2017.
4. If necessary to Collocate a Small Wireless Facility, a Wireless Provider may replace a Decorative Pole, if the replacement pole reasonably conforms to the design and aesthetic qualities of the displaced Decorative Pole.
5. A Wireless Provider shall comply with the City's requirements to install facilities underground, including, without limitation, compliance with Section 7-8-25 of the City Code of the City of Lauderdale.
6. All Small Wireless Facilities Collocated or Wireless Support Structures installed in a Design District or Historic District shall comply with any design or concealment or other measures required by the City.

C) Construction Standards. Any construction standards established by the Administrator shall include at least the following terms and conditions:

1. Compliance with Applicable Law. To the extent this requirement is not preempted or otherwise legally unenforceable, a Permittee shall comply with all Applicable Law and applicable industry standards.
2. Prevent Interference. A Permittee shall Collocate, install, and continuously operate any authorized Small Wireless Facilities and Wireless Support Structures in a manner that prevents interference with other Wireless Facilities and other facilities in the Right-of-Way and the operation thereof. With appropriate permissions from the City, a Permittee shall, as is necessary for the safe and reliable operation, use, and maintenance of an authorized Small Wireless Facility or Wireless Support Structure, maintain trees as prescribed by standards promulgated by the City.
3. Other Rights Not Affected. A Permittee shall not construe a contract, permit, correspondence, or other communication from the City as affecting a right, privilege, or duty previously conferred or imposed by the City to or on another Person.
4. Restoration. A Permittee, after any excavation of a Public Right-of-Way, shall provide for restoration of the affected Public Right-of-Way and surrounding areas, including the pavement and its foundation, to the same condition that existed before the excavation. If a Permittee fails to adequately restore the Public Right-of-Way within a specified date, the City may:
  - a) itself restore the Public Right-of-Way and recover from the Permittee the reasonable costs of the surface restoration; or

- b) recover from the Permittee a reasonable degradation fee associated with a decrease in the useful life of the Public Right-of-Way caused by the excavation.

A Permittee that disturbs uncultivated sod in the excavation or obstruction of the Public Right-of-Way shall plant grasses that are native to Minnesota and, wherever practicable, that are of the local eco-type, as part of the restoration required under this Section, unless the owner of the real property over which the Public Right-of-Way traverses objects. In restoring the Public Right-of-Way, the Permittee shall consult with the City of Wildlife Conservation regarding the species of native grasses that conform to the requirements of this paragraph.

- 5. Permittee's Liability. A Permittee is solely responsible for the risk and expense of the Collocation of the Permittee's Small Wireless Facility and installing or replacing the Permittee's Wireless Support Structure. The City neither warrants nor represents that any area within the Public Right-of-Way is suitable for such Collocation or installation or replacement. A Permittee shall accept the Public Right-of-Way "as is" and "where is" and assumes all risks related to any use. The City is not liable for damage to Small Wireless Facilities due to an event of damage to a Wireless Support Structure in the Public Right-of-Way.

#### **7-9-5: SMALL WIRELESS FACILITY APPLICATION REVIEW PROCESS.**

- A) Eligibility for Review. An Application shall be eligible for review if the Application conforms to the General Standards adopted by the Administrator.
- B) Authorization. A Small Wireless Facility Permit issued pursuant to any Application processed hereunder shall authorize: (1) the installation, mounting, modification, operation, and replacement of a Small Wireless Facility in the Public Right-of-Way or City-owned property; or (2) construction of a new, or replacement of an existing, Wireless Support Structure, and Collocation of a Small Wireless Facility on the Wireless Support Structure.
- C) Review Process. An Application submitted pursuant to this Section shall be reviewed as follows:
  - 1. Submission of Application. Applicant shall submit a complete Application accompanied by the appropriate application fee as set forth in Section 7-9-15 (Fees and Costs) to the City. Prior to submitting a Small Wireless Facility Permit Application, an Applicant shall inspect any Wireless Support Structure on which it proposes to Collocate a Small Wireless Facility and determine, based on a structural engineering analysis by a Minnesota registered professional engineer, the suitability of the Wireless Support Structure for the proposed Collocation. The structural engineering analysis shall be submitted to the City with the Application, and shall certify that the Wireless Support structure is capable of safely supporting the proposed Small Wireless Facility considering conditions at the proposed location, including the condition of the Public Right-of-Way, hazards from traffic,



exposure to wind, snow and/or ice, and other conditions affecting the proposed Small Wireless Facility that may be reasonably anticipated.

2. Application Review Period. The City shall, within sixty (60) days after the date a complete Application for the Collocation is submitted to the City, issue or deny a Small Wireless Facility Permit pursuant to the Application. The City shall, within ninety (90) days after the date a complete Application for a new or replacement Wireless Support Structure in addition to the Collocation of a Small Wireless Facility is submitted to the City, issue or deny a Small Wireless Facility Permit pursuant to the Application. If the City receives applications within a single seven-day period from one or more Applicants seeking approval of Small Wireless Facility Permits for more than thirty (30) Small Wireless Facilities or ten (10) Wireless Support Structures, the City may extend the 90-day review period of this Chapter by an additional 30 days. If the City elects to invoke this extension, it must inform in writing any Applicant to whom the extension will be applied.
3. Completeness Determination. The City shall review a Small Wireless Facility Permit Application for completeness following submittal. The City shall provide a written notice of incompleteness to the Applicant within ten (10) days of receipt of the Application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to the City's determination of whether the proposed equipment falls within the definition of a Small Wireless Facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the Small Wireless Facility Permit request complies with this Chapter and applicable Standards promulgated by the City. If an Applicant fails to respond to the City's notice of incompleteness within ninety (90) days, the Application shall be deemed expired and no Small Wireless Facility Permit shall be issued. Upon an Applicant's submittal of additional documents or information in response to a notice of incompleteness, the City shall within ten (10) days of submission notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness.
4. Reset and Tolling of Review Period. In the event that a Small Wireless Facility Permit Application is incomplete, and the City has provided a timely and complete written notice of incompleteness, then the applicable review period shall be reset, pending the time between when a notice is mailed and the submittal of information in compliance with the notice. Subsequent notices shall toll the applicable review period. An Applicant and the City can mutually agree in writing to toll the applicable review period at any time.
5. Moratorium Prohibited. Notwithstanding any Applicable Law to the contrary, including, but not limited to, Minnesota Statutes Sections 394.34 and 462.355, the City shall not establish any moratorium with respect to the filing, receiving, or

processing of applications for Small Wireless Facility Permits, or issuing or approving Small Wireless Facility Permits.

6. Nondiscriminatory Processing of Applications. The City shall ensure that any Application processed under this Chapter is performed on a nondiscriminatory basis.
7. Permit Not Required. A Permittee shall provide 30 days advance written notice to the City, but shall not be required to obtain a Small Wireless Facility Permit, or pay an additional Small Wireless Facility Permit fee for:
  - a) routine maintenance;
  - b) the replacement of a Small Wireless Facility with a Small Wireless Facility that is substantially similar to or smaller in size; or
  - c) the installation, placement, maintenance, operation, or replacement of a Micro Wireless Facility that is strung on a cable between existing Utility Poles, in compliance with the National Electrical Safety Code.

#### **7-9-6: SMALL WIRELESS FACILITY PERMIT CONDITIONS**

- A) General Conditions of Approval. In processing and approving a Small Wireless Facility Permit, the City shall condition its approval on compliance with:
  1. Generally applicable and reasonable health, safety, and welfare regulations consistent with the City's Public Right-of-Way management;
  2. Reasonable accommodations for a Decorative Pole;
  3. Any reasonable restocking, replacement, or relocation requirements when a new Wireless Support Structure is placed in the Public Right-of-Way;
  4. Construction of the proposed Small Wireless Facility within six (6) months from the date the Small Wireless Facility Permit is issued;
  5. Obtaining additional authorization for use of the Public Right-of-Way for the construction of Wireline Backhaul Facilities or any other wired facilities;
  6. Compliance with the City's General Standards; and
  7. Compliance with all Applicable Law.
- B) Generally Applicable and Reasonable Health, Safety, and Welfare Regulations. Generally applicable and reasonable health, safety, and welfare regulations for purposes of this Section include, without limitation, the following:
  1. A structural engineering analysis by a Minnesota registered professional engineer certifying that a Wireless Support Structure can reasonably support a proposed

Small Wireless Facility considering the conditions of the street, the anticipated hazards from traffic to be encountered at the proposed location, and any wind, snow, ice, or other conditions that may be reasonably anticipated at the proposed location;

2. A determination by the City that, based upon reasonable engineering judgment, a proposed Small Wireless Facility is of excessive size or weight or would otherwise subject a Wireless Support Structure to an unacceptable level of stress;
3. A determination by the City that, based upon reasonable engineering judgment, a proposed Small Wireless Facility would cause undue harm to the reliability or integrity of the City's electrical infrastructure or would likely violate generally applicable electrical or engineering principles;
4. A determination by the City that a proposed Small Wireless Facility presents an unreasonable safety hazard as specifically and reasonably identified by the City;
5. A determination by the City that a proposed Small Wireless Facility impairs the City's ability to operate or maintain the Public Right-of-Way; or
6. A determination by the City that a proposed Small Wireless Facility cannot be placed due to insufficient capacity and the infrastructure cannot be modified or enlarged consistent with the requirements of this Chapter and the City's General Standards;
7. A determination by the City that a proposed Small Wireless Facility is in violation of the National Electric Safety Code or Applicable Law.

C) Authorized Use. An approval of a Small Wireless Facility Permit under this Section authorizes the Collocation of a Small Wireless Facility on an existing Wireless Support Structure to provide Wireless Services, or the installation or replacement of a Wireless Support Structure and Collocation of a Small Wireless Facility, and shall not be construed to confer authorization to:

1. provide any service other than Wireless Service;
2. construct, install, maintain, or operate any Small Wireless Facility or Wireless Support Structure in a Right-of-Way other than the approved Small Wireless Facility or Wireless Support Structure; or
3. install, place, maintain, or operate a Wireline Backhaul Facility in the Right-of-Way.

D) Other Permits Required. Any Person desiring to obstruct or perform excavation in a Public Right-of-Way within the City for purposes of Collocating a Small Wireless Facility or installing or replacing a Wireless Support Structure shall, consistent with Section 7-8-9 of the City Code of the City of Lauderdale, obtain the necessary permit from the City prior to conducting any such activities.

- E) Exclusive Arrangements Prohibited. The City shall not enter into an exclusive arrangement with any Person for use of a Public Right-of-Way for the Collocation of a Small Wireless Facility or for the installation or operation of a Wireless Support Structure.
- F) Unauthorized Small Wireless Facility. No Person shall install, mount, modify, operate, or replace a Small Wireless Facility in the Public Right-of-Way or on City-owned property, or install or replace a Wireless Support Structure without first obtaining a Small Wireless Facility Permit from the City.
1. If an unauthorized Small Wireless Facility or Wireless Support Structure is discovered, the City shall provide written notice to the owner of the unauthorized Small Wireless Facility within five (5) days of discovery of the unauthorized Small Wireless Facility. If an owner of an unauthorized Small Wireless Facility or Wireless Support Structure cannot be reasonably identified, the City need not provide any written notice.
  2. If the owner of an unauthorized Small Wireless Facility or Wireless Support Structure can be reasonably identified, the City may remove the unauthorized Small Wireless Facility or Wireless Support Structure without incurring liability to the owner of the Small Wireless Facility or Wireless Support Structure and at the owner's sole expense no sooner than five (5) days after providing notice of the City's discovery of the unauthorized Small Wireless Facility or Wireless Support Structure to the owner.
  3. If the owner of an unauthorized Small Wireless Facility or Wireless Support Structure cannot be reasonably identified, the City may remove the unauthorized Small Wireless Facility or Wireless Support Structure without incurring liability to the owner of the Small Wireless Facility or Wireless Support Structure and at the owner's sole expense.
- G) Relocation. The City may require a Permittee to relocate or modify a Small Wireless Facility or Wireless Support Structure in a Public Right-of-Way or on City-owned property in a timely manner and at the Permittee's cost if the City determines that such relocation or modification is required to protect public health, safety and welfare, or to prevent interference with other facilities authorized pursuant to this chapter, or to prevent interference with public works projects of the City.
- H) Security Required. Each Permittee shall submit and maintain with the City a bond, cash deposit, or other security acceptable to the City, in a form and amount determined by the City in accordance with the General Standards, securing the faithful performance of the obligations of the Permittee and its agents under any and all Small Wireless Facility Permits issued to the Permittee under this Chapter. If, in accordance with this Chapter, the City deducts any amounts from such security, the Permittee must restore the full amount of the security prior to the City's issuance of any subsequent Small Wireless Facility Permit. The City shall return or cancel the security should the Permittee cease to operate any Small Wireless Facilities in the Right-of-Way.

- I) Payment of Fees Required. A Small Wireless Facility Permit shall not be issued prior to the complete payment of all applicable Fees.
- J) Notice of Assignment Required. A Permittee upon or within ten (10) calendar days after transfer, assignment, conveyance, or sublet of an attachment that changes the permit and/or billing entity or ownership responsibilities shall provide written notification to the City.

#### **7-9-7: SMALL WIRELESS FACILITY PERMIT TERM.**

- A) Term. A Small Wireless Facility Permit for a Small Wireless Facility in the Public Right-of-Way shall have a term equal to the length of time that the Small Wireless Facility is in use, unless the Small Wireless Facility Permit is revoked under this Chapter or is otherwise allowed to be limited by Applicable Law. The term for all other Small Wireless Facility Permits shall be for a period of up to ten (10) years.

#### **7-9-8: DENIAL OR REVOCATION OF A SMALL WIRELESS FACILITY PERMIT.**

- A) Permit Denial. The City may deny any Small Wireless Facility Permit if the Applicant does not comply with all provisions of this Chapter, or if the City determines that the denial is necessary to protect public health, safety, and welfare, or when necessary to protect the Public Right-of-Way and its current use.
- B) Permit Revocation. The City may revoke a Small Wireless Facility Permit, with or without refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule, or regulation, or any material condition of the Small Wireless Facility Permit. A substantial breach includes, but is not limited to, the following:
  - 1. a material violation by act or omission of a provision of a Small Wireless Facility Permit;
  - 2. an evasion or attempt to evade any material provision of a Small Wireless Facility Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;
  - 3. a material misrepresentation of fact in a Small Wireless Facility Permit Application;
  - 4. a failure to correct, in a timely manner, Collocation of a Small Wireless Facility or installation or replacement of a Wireless Support Structure that does not conform to applicable standards, conditions, or codes, upon inspection and notification by the City of the faulty condition;
  - 5. a Permittee fails to make timely payments of any fees due, and does not correct such failure within twenty (20) days after receipt of written notice by the City of such failure;
  - 6. a Permittee becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its Small Wireless Facilities or Wireless Support

Structures are sold under an instrument to secure a debt and is not redeemed by the Permittee within sixty (60) days; or

7. a failure to complete Collocation of a Small Wireless Facility or installation, modification, or replacement of a Wireless Support Structure within two-hundred seventy (270) days of the date a Small Wireless Facility Permit authorizing such activity is granted, unless the City and the Permittee agree to extend the two-hundred seventy day period or there is a lack of commercial power or communications transport infrastructure to the installation site.
- C) Written Notice Required. Any denial or revocation of a Small Wireless Facility Permit shall be made in writing and shall document the basis for the denial or revocation. The City shall notify the Applicant or Permittee in writing within three (3) days of a decision to deny or revoke a Small Wireless Facility Permit. If a Small Wireless Facility Permit Application is denied, the Applicant may cure the deficiencies identified by the City and submit its Application. If the Applicant resubmits the Application within thirty (30) days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The City must approve or deny the revised application within thirty (30) days after the revised application is submitted. If Small Wireless Facility Permit or Wireless Support Structure Permit is revoked, the Small Wireless Facility or Wireless Support Structure shall be subject to removal in accordance with Section 7-9-11 (Removal of a Small Wireless Facility or Wireless Support Structure).

#### **7-9-9: CITY INSPECTION OF A SMALL WIRELESS FACILITY OR WIRELESS SUPPORT STRUCTURE.**

- A) Inspection Permitted. The City may inspect, at any time, a Permittee's Collocation of a Small Wireless Facility or installation or replacement of a Wireless Support Structure. The City shall determine during an inspection whether the Permittee's Small Wireless Facility or Wireless Support Structure is in accordance with the requirements of the Permittee's applicable Small Wireless Facility Permit and other Applicable Law.
- B) Suspension of Activities. During an inspection, if the City determines that a Permittee has violated any material term of the Permittee's Small Wireless Facility Permit or this Chapter, the City may suspend the Permittee's Small Wireless Facility Permit. The City shall provide prompt written notice of any suspension to a Permittee, including the violations giving rise to the suspension. A suspension under this Paragraph is effective until a Permittee corrects the alleged violation(s), at the Permittee's sole expense. If the violation(s) are not corrected within thirty (30) days after the date of such notice, the Small Wireless Facility or Wireless Support Structure shall be subject to removal in accordance with Section 7-9-11 (Removal of a Small Wireless Facility or Wireless Support Structure). A Permittee may appeal any suspension issued under this paragraph to the City as provided in Section 7-9-12 (Appeals).

#### **7-9-10: ABANDONMENT**

- A) Abandoned Small Wireless Facilities and Wireless Support Structures. Where a Small Wireless Facility or Wireless Support Structure is not properly maintained or has not been used for the primary purpose of providing Wireless Services for twelve (12) consecutive months, the City may designate the Small Wireless Facility or Wireless Support Structure as abandoned. The City shall provide written notice to a Permittee within ten (10) days of the Permittee's Small Wireless Facility or Wireless Support Structure being designated as abandoned.

#### **7-9-11: REMOVAL OF A SMALL WIRELESS FACILITY OR WIRELESS SUPPORT STRUCTURE.**

- A) Removal Permitted. The City may remove, at Permittee's expense, or require a Permittee to remove, any Small Wireless Facility or Wireless Support Structure if:
1. The Small Wireless Facility Permit or Wireless Support Structure Permit is revoked under this Chapter or expires without renewal; or
  2. The Small Wireless Facility or Wireless Support Structure is designated by the City as abandoned under Section 7-9-10 (Abandonment).
- B) Notice to Permittee; Time to Remove: The City shall provide written notice to the Permittee that it must remove a Small Wireless Facility or Wireless Support Structure under this section, including the reasons therefor. If the Permittee does not remove the Small Wireless Facility or Wireless Support Structure within thirty (30) days after the date of such notice, the City may remove it at the Permittee's expense without further notice to the Permittee.

#### **7-9-12: APPEALS.**

- A) Appeal. An Applicant or Permittee may have the denial or revocation of a Small Wireless Facility Permit, or fees and costs required by this Chapter reviewed, upon written request, by the City Council or its designee. The City Council or its designee shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council or its designee affirming a denial, revocation, or fee shall be in writing and supported by written findings establishing the reasonableness of the decision.

#### **7-9-13: INSURANCE.**

- A) Minimum Coverage. The City shall require that each Permittee maintain in full force and effect, throughout the term of a Small Wireless Facility Permit, an insurance policy or policies issued by an insurance company or companies satisfactory to the City's Risk Manager. Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's operations, vehicles, employees, agents, subcontractors, successors, and assigns as follows:

1. Workers' compensation, in statutory amounts, with employers' liability limits not less than \$500,000 per each accident, injury, or illness;
2. Commercial general liability insurance with limits not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations;
3. Commercial automobile liability insurance with limits not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired auto coverage, as applicable; and
4. Contractors' pollution liability insurance, on an occurrence form, with limits not less than \$2,000,000 each occurrence combined single limit for bodily injury and property damage and any deductible not to exceed twenty-five thousand dollars (\$25,000) each occurrence.

B) Insurance Requirements. Each Permittee's insurance policy or policies are subject to the following:

1. Said policy or policies shall include the City and its officers and employees jointly and severally as additional insureds, shall apply as primary insurance, shall stipulate that no other insurance effected by the City will be called on to contribute to a loss covered thereunder, and shall provide for severability of interests.
2. Said policy or policies shall provide that an act or omission of one insured, which would void or otherwise reduce coverage, shall not reduce or void the coverage as to any other insured. Said policy or policies shall afford full coverage for any claims based on acts, omissions, injury, or damage which occurred or arose, or the onset of which occurred or arose, in whole or in part, during the policy period.
3. Said policy or policies shall be endorsed to provide thirty (30) calendar days advance written notice of cancellation or any material change to the City.
4. Should any of the required insurance be provided under a claims-made form, a Permittee shall maintain such coverage continuously throughout the term of a Small Wireless Facility Permit, and, without lapse, for a period of three (3) years beyond the expiration or termination of the Small Wireless Facility Permit, to the effect that, should occurrences during the term of the Small Wireless Facility Permit give rise to claims made after expiration or termination of the Small Wireless Facility Permit, such claims shall be covered by such claims-made policies.
5. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be double the occurrence or claims limits specified herein.

C) Indemnity Obligation. Such insurance shall in no way relieve or decrease a Permittee's or its agent's obligation to indemnify the City pursuant to this Chapter.



- D) Proof of Insurance. Before the City will issue a Small Wireless Facility Permit, an Applicant shall furnish to the City certificates of insurance and additional insured policy endorsements with insurers that are authorized to do business in the State of Minnesota and that are satisfactory to the City evidencing all coverages set forth herein.

#### **7-9-14: INDEMNIFICATION AND DEFENSE OF CITY.**

- A) Indemnification of City. As a condition of issuance of a Small Wireless Facility Permit, each Permittee agrees on its behalf and on behalf of its agents, successors, or assigns, to indemnify, defend, protect, and hold harmless the City from and against any and all claims of any kind arising against the City as a result of the issuance of the Small Wireless Facility Permit including, but not limited to, a claim allegedly arising directly or indirectly from the following:
1. Any act, omission, or negligence of a Permittee or its any agents, successors, or assigns while engaged in the permitting or Collocation of any Small Wireless Facility or installation or replacement of any Wireless Support Structure, or while in or about the Public Right-of-Way that are subject to the Small Wireless Facility Permit for any reason connected in any way whatsoever with the performance of the work authorized by the Small Wireless Facility Permit, or allegedly resulting directly or indirectly from the permitting or Collocation of any Small Wireless Facility or installation or replacement of any Wireless Support Structure authorized under the Small Wireless Facility Permit;
  2. Any accident, damage, death, or injury to any of a Permittee's contractors or subcontractors, or any officers, agents, or employees of either of them, while engaged in the performance of Collocation of any Small Wireless Facility or installation or replacement of any Wireless Support Structure authorized by a Small Wireless Facility Permit, or while in or about the Public Right-of-Way that are subject to the Small Wireless Facility Permit, for any reason connected with the performance of the work authorized by the Small Wireless Facility Permit, including from exposure to radio frequency emissions;
  3. Any accident, damage, death, or injury to any Person or accident, damage, or injury to any real or personal property in, upon, or in any way allegedly connected with the Collocation of any Small Wireless Facility or installation or replacement of any Wireless Support Structure authorized by a Small Wireless Facility Permit, or while in or about the Public Right-of-Way that are subject to the Small Wireless Facility Permit, from any causes or claims arising at any time, including any causes or claims arising from exposure to radio frequency emissions; and
  4. Any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by a Permittee or its agents about, in, on, or under the Public Right-of-Way.
- B) Defense of City. Each Permittee agrees that, upon the request of the City, the Permittee, at no cost or expense to the City, shall indemnify, defend, and hold harmless the City against

any claims as set forth in this Section, regardless of the alleged negligence of the City or any other party, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claims that actually or potentially fall within the indemnity provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to the Permittee or its agent by the City and continues at all times thereafter. Each Permittee further agrees that the City shall have a cause of action for indemnity against the Permittee for any costs the City may be required to pay as a result of defending or satisfying any claims that arise from or in connection with a Small Wireless Facility Permit, except only for claims resulting directly from the sole negligence or willful misconduct of the City. Each Permittee further agrees that the indemnification obligations assumed under a Small Wireless Facility Permit shall survive its expiration or completion of Collocation of any Small Wireless Facility authorized by the Small Wireless Facility Permit.

- C) Additional Requirements. The City may specify in a Small Wireless Facility Permit such additional indemnification requirements as are necessary to protect the City from risks of liability associated with the Permittee's Collocation of any Small Wireless Facility or installation or replacement of any Wireless Support Structure.

#### **7-9-15: FEES AND COSTS.**

- A) Application Fees. The City shall charge a fee for reviewing and processing a Small Wireless Facility Permit Application. The purpose of this fee is to enable the City to recover its costs directly associated with reviewing a Small Wireless Facility Permit Application.
1. The City shall charge a fee of \$500 for a Small Wireless Facility Permit Application seeking to Collocate up to five (5) Small Wireless Facilities. This fee shall increase by \$100 for each additional Small Wireless Facility that an Applicant seeks to Collocate.
  2. The City shall charge a fee of \$1,000 for a Small Wireless Facility Permit Application seeking to install or replace a Wireless Support Structure in addition to Collocating of a Small Wireless Facility on the Wireless Support Structure.

Commencing January 1, 2020, the City shall adjust the Application Fees annually by the consumer price index for the Minneapolis-St. Paul area.

- B) Annual Small Wireless Facility Permit Fee. The City shall charge an Annual Small Wireless Permit Fee for each Small Wireless Facility Permit issued to a Permittee. The Annual Small Wireless Permit Fee shall be approved by the City Council and listed in the City's Fee Schedule. The Annual Small Wireless Permit Fee shall be based upon the recovery of the City's rights-of-way management costs.
- C) City-Owned Wireless Support Structure Fees. The City shall charge the following fees to the owner of any Small Wireless Facility Collocated on a Wireless Support Structure owned by the City or its assigns located in the Public Right-of-Way:

1. \$150 per year for rent to occupy space on the Wireless Support Structure;
  2. \$25 per year for maintenance associated with the space occupied on the Wireless Support Structure; and
  3. a monthly fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, at the rate of:
    - a) \$73 per radio node less than or equal to 100 max watts;
    - b) \$182 per radio node over 100 max watts; or
    - c) the actual costs of electricity, if the actual costs exceed the above.
- D) City-Owned Property Fees. The City shall charge an annual fee for collocating Small Wireless Facilities on City-owned property not located in the public right-of-way. The City shall determine a fee on a per location and per request basis.
- E) Discretion to Require Additional Fees. In instances where the review of a Small Wireless Facility Permit Application is or will be unusually costly to the City, the Administrator, in his or her discretion, may, after consulting with other applicable cities, agencies, boards, or commissions, require an Applicant to pay a sum in excess of the other fee amounts charged pursuant to this Section. This additional sum shall be sufficient to recover the actual, reasonable costs incurred by the City and/or other cities, agencies, boards, or commissions, in connection with a Small Wireless Facility Permit Application and shall be charged on a time and materials basis. Whenever additional fees are charged, the Administrator, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees. The City may not require a fee imposed under this Chapter through the provision of in-kind services by an Applicant as a condition of consent to use to City's Public Right-of-Ways or to obtain a Small Wireless Facility Permit.
- F) Reimbursement of City Costs. The City may determine that it requires the services of an expert in order to evaluate a Small Wireless Facility Permit Application. In such cases, the City shall not issue a Small Wireless Facility Permit pursuant to the Application unless the Applicant agrees to reimburse the City for the actual, reasonable costs incurred for the services of a technical expert.

#### **7-9-16: SEVERABILITY.**

- A) Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof.\

SECTION III. The City's fee schedule is hereby amended by adding the following fees:

Annual Small Wireless Permit Fee	\$250.00
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SECTION IV. This ordinance shall be effective upon its adoption and publication.

Adopted by the City Council of the City of Lauderdale this 12<sup>th</sup> day of March, 2019.

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Mary Gaasch, Mayor

ATTEST:

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Heather Butkowski, City Administrator

Published in the Roseville Review on the 2<sup>nd</sup> day of April, 2019.