

ORDINANCE NO. 2020 - 27

AN ORDINANCE AMENDING RIGHT-OF-WAY MANAGEMENT AND ZONING STANDARDS PERTAINING TO THE DEPLOYMENT OF SMALL WIRELESS FACILITIES, ANTENNAS AND TOWERS IN THE PUBLIC RIGHT-OF-WAY, THEREBY AMENDING CHAPTERS 17, 19 AND 21 OF THE CITY CODE.

The City Council of the City of Bloomington, Minnesota ordains:

Section 1. That Chapter 17 of the City Code is hereby amended by deleting those words that are contained in brackets [] with ~~striketrough~~ text and adding those words that are underlined, to read as follows:

CHAPTER 17: STREETS AND RIGHTS-OF-WAY

ARTICLE IV. RIGHT-OF-WAY MANAGEMENT AND LOCATING OF UNDERGROUND FACILITIES

§ 17.64 FINDINGS AND PURPOSE

The city holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens. The city and other public entities have a substantial investment of public funds to build and maintain the rights-of-way. It also recognizes that some persons, by placing their equipment in the right-of-way and charging the citizens of the city for goods and services delivered thereby, are using this property held for the public good. Although such services are often necessary or convenient for the citizens, such persons receive revenue and/or profit through their use of public property. Although the installation of such service delivery facilities are in most cases necessary and proper use of the right-of-way, the city must regulate and manage such uses for the common good.

To provide for the health, safety and well-being of its citizens and to ensure the structural integrity of its streets and the appropriate use of rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances. Although the general population funds the majority of the upkeep of the rights-of-way, one of the causes for the early and excessive deterioration of its rights-of-way is frequent excavation.

In order to fulfill its duties imposed by the Minnesota Office of Pipeline Safety under Minnesota Rules Chapter 7560 to maintain information regarding the location of privately owned and installed underground facilities within a public right-of-way and to protect the public health, safety and welfare from any dangers posed by underground facilities the location of which is not of record, the city shall require private property owners and their private utility contractors, excavators and installers to provide the city with up to date, accurate information of all underground equipment installed in the public right-of-way or in any public ground or on any property where the facility or equipment is now or in the future to be connected to the city's facilities.

This Article IV imposes reasonable regulations on the placement and maintenance of facilities and equipment currently within its rights-of-way or to be placed therein at some future time. It is intended to complement the regulatory roles of state and federal agencies. Under this Article IV, persons excavating, disturbing or obstructing the rights-of-way will bear a share of the financial responsibility for their work through the recovery of out-of-pocket and projected costs for maintaining the integrity of the public rights-of-way. This Article IV also provides for recovery of the city's costs associated with managing its rights-of-way.

This Article IV shall be interpreted consistently with 1997 Session Laws, Chapter 123, substantially codified in M.S. §§ 237.16, 237.162, 237.163, 237.79, 237.81 and 238.086, ~~[as they may be amended from time to time]~~(the "Act"), and the other laws governing applicable rights of the city and users of the right-of-way. This Article IV shall also be interpreted consistently with Minnesota Rules 7819.0050 through 7819.9950, and Minn. R., ch. 7560 where possible as applicable. To the extent any provision of this chapter cannot be interpreted consistently with the Minnesota Rules, that interpretation most consistent with the Act and other applicable statutory and case law is intended. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

§ 17.65 DEFINITIONS

CO-LOCATE OR CO-LOCATION. 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 or other governmental unit.

PUBLIC RIGHT-OF-WAY. 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 easements of the city. A right of way does not include the airwaves above a right of way with regard to cellular or other non-wire telecommunications or broadcast service.

RIGHT-OF-WAY PERMIT. An excavation permit, obstruction permit, pole attachment permit or a utility permit, or any combination thereof, depending on the context required by this Article IV.

SMALL WIRELESS FACILITY. A wireless facility, as defined in MS §237.162, that meets both of the following qualifications:

- (1) Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and

(2) All other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including 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.

WIRELESS SUPPORT STRUCTURE. A new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

WIRELESS TELECOMMUNICATION FACILITY. A tangible asset used to provide wireless telecommunication or data services, including all antennas, support devices, equipment including ground equipment, associated cables and attachments.

§ 17.66 REGISTRATION

(c) *Registration Information.* The registrant ~~[shall]~~must provide, at the time of registration and within 15 days following the date the registrant becomes aware of any change thereto, the following information:

- (1) Registrant's name, address, telephone number, facsimile number and Gopher One Call registration certificate number if required by state law;
- (2) Name, street address, e-mail address, telephone number and facsimile number of the person responsible for fulfilling the obligations of the registrant;
- (3) A certificate of insurance from a company licensed to do business in the State of Minnesota providing minimum coverage in the following amounts:

(A) Worker's compensation: \$500,000 each person, each occurrence.

(B) General liability, including bodily injury and property damage: \$1,500,000 per occurrence, \$3,000,000 minimum general aggregate and \$2,000,000 products and completed operations aggregate.

(C) Automobile liability insurance, including owned, non-owned and hired vehicles: \$1,500,000 per occurrence and \$3,000,000 general aggregate.

(D) Property insurance, covering damages to the registrant's property in the right-of-way: in an amount sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements \$1,000,000 or greater.

(E) The City may require an adjustment to insurance coverage limits for any installation in place longer than 12 months.

~~[Public liability, including premises, products and complete operations:~~

~~Bodily injury liability: \$1,000,000 each person, \$3,000,000 each occurrence; and~~

~~Property damage liability: \$3,000,000 each occurrence.~~

~~In lieu of subsections (1) and (2), bodily injury and property damage combined: \$3,000,000 single limit.~~

~~*Comprehensive:*~~

~~Automobile liability insurance, including owned, non-owned and hired vehicles:~~

~~Bodily injury liability: \$1,000,000 each person, \$3,000,000 each occurrence; and~~

~~Property damage liability: \$3,000,000 each occurrence.~~

~~In lieu of (1) and (2), bodily injury and property damage combined: \$3,000,000 single limit.]~~

§ 17.68 PERMIT REQUIRED

- (a) *Permit required.* Except at otherwise provided in this code, no registrant may obstruct or excavate any right-of-way without first having been issued the appropriate right-of-way permit pursuant to this section and conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

- (3) *Pole attachment permit.* A pole attachment permit is required by the registrant in order to attach a wireless telecommunication facility to a[n] new or existing [public utility structure] wireless support structure in the public right-of-way. [A pole attachment permit is not required if a registrant has been issued a valid excavation permit for the same project.] A wireless telecommunication facility shall only be co-located on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application. A permit will be deemed void if the approved equipment is not installed within one year of issuance of the permit. Wireless telecommunication facilities that are larger than what is defined as a small wireless facility in §17.65 of this code are not permitted and therefore not eligible for a pole attachment permit.
- (4) *Small Wireless Facility Agreement.* A wireless telecommunication facility may not be co-located on a wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, unless it meets the definition of a Small Wireless Facility and the applicant has executed a standard small wireless facility co-location agreement with the city. The standard co-location agreement requires payment of fees as authorized under M.S. 237.163. The standard co-location agreement shall be in addition to, and not in lieu of, the required pole attachment permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to co-locate. Issuance of a pole attachment permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

§ 17.70 STANDARDS FOR CONSTRUCTION OR INSTALLATION

(d) *Standards for wireless telecommunication facilities.*

- (2) *Wireless telecommunication facilities as pole attachments.* Wireless telecommunication facilities that meet the definition of a Small Wireless Facility and comply with the following requirements may be attached to existing [public utility]wireless support structures within the right-of-way after issuance of a pole attachment permit and execution of a Small Wireless Facility Agreement for co-locations on city-owned structures.
- (A) The wireless telecommunication facility shall not extend above the top of the existing [public utility]wireless support structure and the height of the existing [public utility]wireless support structure shall not be increased to accommodate the wireless telecommunication facility.
 - (B) If the [public utility]wireless support structure must be replaced to structurally accommodate the wireless telecommunication facility, the replacement [public utility]wireless support structure height shall not exceed the existing [public utility]wireless support structure height and the replacement [public utility]wireless support structure diameter shall not exceed the existing [public utility]wireless support structure diameter by more than 50%. The replacement wireless support structure must comply with the city's Aesthetic Standards as adopted by the City Engineer. The city may impose reasonable restocking, replacement, or relocation requirements on the replacement of a city-owned structure, and may impose standards that ensure city assets can continue to effectively perform their intended function.
 - (C) ~~The wireless telecommunication facility shall~~ Each antenna must not be larger than [three]six cubic feet and shall have no individual surface larger than four square feet.
 - (D) The wireless telecommunications facility shall not extend outward from the existing pole or tower or arm thereof by more than ~~[two and one-half]three feet~~, except that an antenna one-half inch in diameter or less may extend an additional six inches.
 - (E) The wireless telecommunications facility shall include no ground mounted equipment within the planned widened rights-of-way.
 - (F) The wireless telecommunications facility shall not interfere with public safety communications and shall meet the requirements of §19.63.05 of this code.
 - (G) Wireless telecommunication facilities in the right-of-way shall be removed and relocated at city request subject to the provisions of this Article IV.
 - (H) The wireless telecommunication facility shall not block light emanating from the [public utility]wireless support structure and shall not otherwise interfere with the original use of the [public utility]wireless support structure.

(3) *Wireless telecommunication facilities as pole extensions or with ground mounted equipment.* Wireless telecommunication facilities that meet the definition of a Small Wireless Facility and that either require increased [public utility]wireless support structure height or [that] have ground mounted equipment may be erected in the public right-of-way only when in compliance with the following provisions and after issuance of a pole attachment permit[er], excavation permit and execution of a Small Wireless Facility Agreement for co-locations on city-owned structures.

(A) ~~[The applicant shall demonstrate to the satisfaction of the Planning Manager or designee that the wireless telecommunication facility cannot be placed in a code complying location outside the right-of-way within one-quarter mile of the proposed location.]~~ Reserved.

(B) The replacement [public utility]wireless support structure, including lightning[lightening] rods and all other attachments, shall not exceed the greater of 50 feet or the height of the existing wireless support structure at that location if it was in place on May 31, 2017. ~~[the height of the existing public utility structure by more than 15 feet. Once the height of a public utility structure has been increased under the provisions of this section, the height shall not be further increased.]~~

(C) The replacement [public utility]wireless support structure diameter shall not exceed the existing [public utility]wireless support structure diameter by more than 50%.

(D) The wireless telecommunication facility shall not extend outward from the [public utility]wireless support structure by more than ~~[two]~~three feet.

(E) If feasible and desirable, as determined by the ~~[Planning Manager]~~City Engineer or designee, the replacement [public utility]wireless support structure shall match the original and surrounding [public utility]wireless support structures in materials and color, and shall comply with the City's Aesthetic Standards as adopted by the City Engineer.

(F) The city may impose reasonable restocking, replacement, or relocation requirements on the replacement of a city-owned structure, and may impose standards that ensure city assets can continue to effectively perform their intended function.

~~(G)~~ The wireless telecommunication facility shall not interfere with public safety communications and shall meet the requirements of §19.63.05 of this code.

~~(G)~~ (H) A pole attachment or excavation permit for a wireless telecommunication facility that has ground mounted equipment will be issued only if the issuing authority finds the following:

- i. The ground mounted equipment will not disrupt traffic or pedestrian circulation;
- ii. The ground mounted equipment will not create a safety hazard;
- iii. The location of the ground mounted equipment minimizes impacts on adjacent property; and
- iv. The ground mounted equipment will not adversely impact the health, safety or welfare of the community.

~~[(H)]~~ (I) Above grade ~~g~~[G]round mounted equipment associated with the wireless telecommunication facility shall meet the following performance standards:

- ~~(i)~~ ~~[Be set back a minimum of ten feet from the planned widened rights of way]~~
- (i) Be separated from a sidewalk by a minimum of two~~[three]~~ feet;
- (ii) ~~[(iii)]~~ Be set back a minimum of 50 feet from the nearest intersecting right-of-way line;
- ~~[(iii)]~~ ~~[Be separated from the nearest ground mounted wireless telecommunication equipment installation on the same block face by a minimum of 330 feet unless the equipment is placed underground;]~~
- (iii) ~~[(v)]~~ if located adjacent to residential uses, above grade ground mounted equipment in the public right of way shall be limited to three feet in height above grade and 27 cubic feet in cumulative size;
- (iv) ~~[(vi)]~~ If located adjacent to nonresidential uses, above grade ground mounted equipment in the public right of way shall be limited to five feet in height above grade and 81 cubic feet in cumulative size;
- (v) ~~[(vii)]~~ Ground mounted equipment outside the planned widened public right-of-way shall conform with the requirements of §19.63.05(j) of this code; and
- (vi) ~~[(vii)]~~ Vegetative or other screening compatible with the surrounding area shall be provided around the ground mounted equipment if deemed necessary by the Planning Manager or designee.

~~[(H)]~~(J) Wireless telecommunication facilities in the right-of-way shall be removed and relocated at city request subject to the provisions of this Article IV.

(4) Wireless Telecommunication Facilities with New ~~[(p)]~~Poles or New Wireless Support Structures. ~~[The erection in the right-of-way of a new pole to support wireless telecommunication facilities is not allowed]~~ Wireless Telecommunication Facilities with new poles or new Wireless Support Structures may be erected in the public right-of-way only when they meet the definition of a Small Wireless Facility and are in compliance with the following provisions and after issuance of a pole attachment permit and excavation permit.

(A) Separation. A new pole or other wireless support structure may be placed no closer than 600 feet from any existing wireless support structure, except as a replacement of an existing public utility structure subject to the requirements of this section.

(B) Height. A new pole or wireless support structure, including lightning rods, wireless telecommunication facilities and all other attachments, may not exceed 50 feet in height.

(C) Diameter. The maximum diameter of a new pole or wireless support structure is one and one-half (1.5) feet.

(D) Equipment Extension. The wireless telecommunication facility or related equipment may not extend outward from a new pole or wireless support structure by more than three feet.

- (E) Pole Design. If feasible and desirable, as determined by the City Engineer or designee, the new pole or wireless support structure must match the surrounding public utility structures in materials and color, and must comply with the City's Aesthetic Standards as adopted by the City Engineer.
- (F) Interference. The new pole or other wireless support structure must not interfere with public safety communications and must meet the requirements of §19.63.05 of this code.
- (G) Ground Mounted Equipment. Permits for wireless telecommunication facilities with new poles or new wireless support structures that have ground mounted equipment will be issued only if the findings in §17.70(d)(3)(G) of this code are made by the issuing authority. Above grade ground mounted equipment associated with the wireless telecommunication facility is subject to the performance standards of §17.70(d)(3)(H) of this code.
- (H) Wireless telecommunication facilities in the right-of-way must be removed and relocated at city request subject to the provisions of this Article IV.

Section 2. That Chapter 19 of the City Code is hereby amended by deleting those words that are contained in brackets [] with ~~striketrough~~ text and adding those words that are underlined, to read as follows:

CHAPTER 19: ZONING

ARTICLE V. PERFORMANCE STANDARDS

§ 19.63.05 TOWERS

(b) *Area specific requirements for towers and antennas.*

- (1) Towers outside the right of way in residential zoning districts. Towers shall be allowed only in the following residentially zoned areas:
 - (A) Towers supporting amateur radio antennas and conforming to all applicable provisions of this code shall be allowed only in the rear yard of residentially zoned parcels.

(B) Towers supporting commercial antennas and conforming to all applicable provisions of this code shall be allowed only in the following residentially zoned locations:

- (i) Church sites, when the antenna support structure is fully camouflaged as a bell tower, steeple or similar structure;
- (ii) Park sites, when compatible with the nature of the park; and
- (iii) Government, school, utility and institutional sites~~[-, not including the public right-of-way].~~

(2) Antennas and towers in the public right-of-way. Wireless telecommunication facilities, towers and antennas ~~[may co-locate with existing poles or towers]~~ in the city, county or state right-of-way ~~[within any zoning district only when in compliance with]~~ are also subject to the requirements in Chapter 17, Article IV of this code.

(t) Conflict with state statutes. To the extent that standards in this section are in conflict with applicable provisions in state statutes, the applicable state statute provisions supersede the standards in this section.

Section 3. That Chapter 21 of the City Code is hereby amended by deleting those words that are contained in brackets [] with ~~strikethrough~~ text and adding those words that are underlined, to read as follows:

CHAPTER 21: ZONING AND LAND DEVELOPMENT

ARTICLE II. DISTRICTS AND USES

DIVISION H: USES

§ 21.209 USE TABLES

(c) *Residential Zoning Districts.*

Use Type	Zoning District									References; See Listed Section
	R-1	R-1A	RS-1	R-3	R-4	RM-12	RM-24	RM-50	RM-100	

<u>Antenna, outside the right of way</u>	L	L	L	L	L	L	L	L	L	L	19.63.05
Amateur radio tower	A	A	A			A					15.14; 19.63.05; 21.301.10
<u>Tower, outside the right of way</u>	CL	CL	CL	CL	CL	CL	CL	CL	CL	CL	19.63.05(b)
<u>Tower or antenna in the right of way</u>	P	P	P	P	P	P	P	P	P	P	<u>17.70 (d)</u>

(d) *Neighborhood and Freeway Commercial Zoning Districts.*

Use Type	Zoning District								References; See Listed Section
	B-1	B-2	B-4	C-1	C-2	C-3	C-4	C-5	

<u>Antenna, outside the right of way</u>	L	L	L	L	L	L	L	L	L	19.63.05
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<u>Tower, outside the right of way</u>	CL	CL		CL	CL		CL		19.63.05
<u>Tower or antenna in the right of way</u>	P	P	P	P	P	P	P	P	<u>17.70 (d)</u>

(e) *Industrial Zoning districts.*

Use Type	Zoning District						References; See Listed Section
	IT	I-1	I-2	I-3	IP	FD-2	

<u>Antenna, outside the right of way</u>	L	L	L	L	L	L	19.63.05
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<u>Tower, outside the right of way</u>	C	C	C	C	C	C	19.63.05
<u>Tower or antenna in the right of way</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>17.70 (d)</u>

(f) *Specialized zoning districts.*

Use Type	Zoning District		References See Listed Section
	CX-2	LX	

<u>Antenna, outside the right of way</u>	L	L	19.63.05
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<u>Tower, outside the right of way</u>	CL		19.63.05
<u>Tower or antenna in the right of way</u>	<u>P</u>	<u>P</u>	<u>17.70 (d)</u>

Passed and adopted this 27th day of July, 2020.

/s/ Tim Busse
Mayor

ATTEST:

APPROVED:

/s/ Denise M. Christenson
Secretary to the Council

/s/ Melissa J. Manderschied
City Attorney