CITY OF ST. PAUL PARK
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 742

AN ORDINANCE AMENDING CHAPTERS 58 & 74 OF THE CITY CODE RELATED TO SMALL CELL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, the City of St. Paul Park, Minnesota, wishes to amend certain portions of Chapters 58 and 74 of the City Code related to electing to manage the right-of-way regarding small cell wireless facilities, require conditional use permits for such facilities in certain cases, and establish fees for such uses; and

NOW THEREFORE, the City Council of the City of St. Paul Park, County of Washington, State of Minnesota, does hereby ordain as follows:

Section 1. That Code Section 58-31 shall hereby be amended to read as follows:

Sec. 58-31. - Findings, purpose, and intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the rights-of-way, the city strives to keep its rights-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby enacts this new article of this Code relating to right-of-way permits and administration. This article imposes reasonable regulation 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, persons excavating and obstructing the rights-of-way will bear financial responsibility for their work. Finally, this article provides for recovery of out-of-pocket and projected costs from persons using the public rights-of-way.

This article shall be interpreted consistently with 1997 session laws, chapter 123, substantially codified in Minn. Stat. § 237.16, 237.162, 237.163, 237.79, 237.81, and 238.086 (the "Act") and 2017 Session Laws, Chapter 94 amending the Act and the other laws governing applicable rights of the city and users of the right-of-way. This article shall also be interpreted consistent with Minn. Rules 7819.0050—7819.9950 where possible. 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 article 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.

Section 2. That Code Section 58-33 be amended to include the following new and revised definitions:

Collocate or Collocation means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure or utility pole that is owned privately, or by the city or other governmental unit.

Management Costs means the actual costs the city incurs in managing its rights-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the
adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits.

Management costs do not include payment by a telecommunications right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and cost of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123; Minnesota Statutes Sections 237.162 or 237.163; or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to section 58-61 of this chapter.

*Public right-of-way or right-of-way* means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or 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 nonwire telecommunications or broadcast service.

*Small Wireless Facility* means a wireless facility that meets both of the following qualifications:

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

(ii) 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.

*Telecommunications right-of-way user* means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way that is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services, whether provided by a public utility as defined in Minn. Stat. Sec. 216B.02, a municipality, a municipal gas or power agency organized under Minn. Stat. Chaps. 453 and 453A, or a cooperative electric association organized under Minn. Stat. Chap. 308A, are not telecommunications right-of-way users for purposes of this chapter except to the extent such entity is offering wireless service.

*Utility Pole* means a pole that is used in whole or in part to facilitate telecommunications or electric service.

*Wireless Facility* means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, or/and a small wireless facility, but not including wireless support structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.
Wireless Service means 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 cable service.

Wireless Support Structure means 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.

Section 3. That Code Section 58-38 (a) (6) shall be amended to read as follows:

(6) A copy of the person's order granting a certificate of authority from the Minnesota Public Utilities Commission or other authorization or approval from the applicable state or federal agency to lawfully operate, where the person is lawfully required to have such authorization or approval certificate from said commission or other state or federal agency.

Section 4. That Code Section 58-40 (a) shall be amended to read as follows:

(a) Permit required. Except as otherwise provided in this Code, no person may obstruct, excavate, or place facilities in any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so:

(1) Excavation permit. An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) Obstruction permit. An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(3) Small Wireless Facility Permit. A small wireless facility permit is required by a registrant to erect or install a wireless support structure, to collocate a small wireless facility, or to otherwise install a small wireless facility in the specified portion of the right-of-way, to the extent specified therein, provided that such permit shall remain in effect for the length of time the facility is in use, unless lawfully revoked.

Section 5. That Code Sections 58-42 (c) through (e) are added to read as follows:

c) Small Wireless Facility Conditions. In addition to subdivision (b), the erection or installation of a wireless support structure, the collocation of a small wireless facility, or other installation of a small wireless facility in the right-of-way, shall be subject to the following conditions:

(1) A small wireless facility shall only be collocated on the particular wireless support structure, under those attachment specifications, and at the height indicated in the applicable permit application.

(2) No new wireless support structure installed within the right-of-way shall exceed 50 feet in height without the city's written authorization, provided that the city may impose a lower height limit in the applicable permit to protect the public health, safety and welfare or to protect the right-of-way and its current use, and further provided that a registrant may replace an existing wireless support
structure exceeding 50 feet in height with a structure of the same height subject to such conditions or requirements as may be imposed in the applicable permit.

(3) No wireless facility may extend more than 10 feet above its wireless support structure.

(4) Where an applicant proposes to install a new wireless support structure in the right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way.

(5) Where an applicant proposes collocation on a decorative wireless support structure, sign or other structure not intended to support small wireless facilities, the city may impose reasonable requirements to accommodate the particular design, appearance or intended purpose of such structure.

(6) Where an applicant proposes to replace a wireless support structure, the city may impose reasonable restocking, replacement, or relocation requirements on the replacement of such structure.

(7) New wireless support structures in the right-of-way adjacent to R-1 or R-2 Zoning Districts require a conditional use permit subject to the terms of Section 74-914

(d) Small Wireless Facility Agreement. A small wireless facility shall only be collocated on a small wireless support structure owned or controlled by the city, or any other city asset in the right-of-way, after the applicant has executed a standard small wireless facility collocation agreement with the city. The standard collocation agreement requires payment of the following:

(1) Up to $150 per year for rent to collocate on the city structure.

(2) $25 per year for maintenance associated with the collocation;

(3) A monthly fee for electrical service as follows:

   (i) $73 per radio node less than or equal to 100 maximum watts;

   (ii) $182 per radio node over 100 maximum watts; or

   (iii) The actual costs of electricity, if the actual cost exceed the foregoing.

The standard collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant.

(e) Sec. 1.12 Action on Small Wireless Facility Permit Applications.

(1) Deadline for Action. The city shall approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.
(2) Consolidated Applications. An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all small wireless facilities in the application:

(i) are located within a two-mile radius;
(ii) consist of substantially similar equipment; and
(iii) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

(3) Tolling of Deadline. The 90-day deadline for action on a small wireless facility permit application may be tolled if:

(i) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension.

(ii) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information.

(iii) The city and a small wireless facility applicant agree in writing to toll the review period.

Section 6. That Code Section 58-43 shall be amended to read as follows:

Sec. 58-43. - Permit fees.

(a) Excavation permit fee. The city shall impose an excavation permit fee in an amount sufficient to recover the following costs:

(1) The city management costs;
(2) Degradation costs, if applicable.

(b) Obstruction permit fee. The city shall impose the obstruction permit fee and shall be in an amount sufficient to recover the city management costs.

(c) Small Wireless Facility Permit Fee. The city shall impose a small wireless facility permit fee in an amount sufficient to recover:

(1) Management Costs;
(2) City Engineering, make-ready, and construction costs associated with collocation of small wireless facilities.
(d) Payment of permit fees. No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees within 30 days of billing.

(e) Non refundable. Permit fees that were paid for a permit that the city has revoked for a breach as stated in section 58-53 are not refundable.

(f) Application to franchises. Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

Section 7. That Code Section 58-48 shall be amended to read as follows;

Sec. 58-48. – Denial or revocation of permit.

(a) Reasons for Denial. The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way and its current use.

(b) Procedural Requirements. The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

Section 8. That Code Section 74-914 shall be added to read as follows:


(a) Purpose. The purpose of this Section is to establish zoning regulations related to the siting of small cell wireless facilities in the public right-of-way as defined and regulated by City Code Sections 58-31 through 58-62. Terms used herein are defined in Sections 58-33.

(b) Conditional Use Permit Required. Small cell wireless support structures shall require a conditional use permit when located adjacent to or within the R-1 and R-2 Districts or any PUD District with an underlying designation of R-1 or R-2.

(c) Conditional Use Standards. No conditional use permit shall be granted unless it meets the following standards:

   (1) No new wireless support structure shall be greater than 50 feet in height.

   (2) No new wireless support structure shall be closer than 5 feet to a curb, driveway, or pedestrian way.

   (3) No new wireless support structure shall be more than 5 feet from the side lot line extended to the street.

   (4) To the extent possible, all antenna and equipment shall be shrouded and/or camouflaged.
(5) New wireless support structures shall be constructed from earth-tone fiberglass.

(6) All facilities shall use colors to minimize the visual impact when viewed from the public right-of-way and nearby properties, except in instances where the color is dictated by the federal or state authorities.

(7) Small cell wireless facilities shall be served by underground power and communication lines in areas where utilities are underground.

(8) Equipment enclosures shall be screened from view with landscaping materials.

(9) If the proposed facility results in significantly increased sound levels, sound buffers may be required, including but not limited to baffling, barriers, enclosures, walls, and plantings.

(10) Small cell facilities shall not be illuminated by artificial means and shall not display lights.

(d) All small cell wireless facilities not within a public right of way shall adhere to all other requirements of Sections 74-901 through 74-913.

Section 9. That Code Section 42-1 (b) 6. E. shall be amended to include the following fee:

Small Cell Wireless Permit $300

Section 10. This ordinance shall be in effect upon passage and publication.

ADOPTED by the City Council of the City of St. Paul Park, Minnesota this 18th day of December 2017,

Sandi Dingle, Mayor

ATTEST:

Sharon Ornquist, City Clerk
SUMMARY ORDINANCE NO. 742

AN ORDINANCE AMENDING CHAPTERS 58 & 74 RELATED TO SMALL CELL WIRELESS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

The City Council of the City of St. Paul Park has adopted Ordinance No. 742. The purpose and intent of this ordinance is to elect to manage the public right-of-way in regard to small cell wireless facilities, to require such facilities to get a conditional use permit in single family neighborhoods, and to establish fees.

The full text of Ordinance No. 742 is available for inspection at St. Paul Park City Hall during regular business hours.

Approved for publication by the City Council of the City of St. Paul Park, Minnesota this 18th day of December 2017.

Sharon Ornquist, City Clerk