

BILL NO. 2024-153

ORDINANCE NO. 12110

AN ORDINANCE AMENDING SECTION 50-50 OF THE CODE OF ORDINANCES OF THE CITY OF SEDALIA, MISSOURI RELATING TO THE DENIAL OF AN APPLICATION FOR A RIGHT-OF-WAY PERMIT.

WHEREAS, the City of Sedalia, Missouri has the authority to enact regulations regarding the issuance and denial of licenses and permits; and

WHEREAS, the City of Sedalia, Missouri has determined that it is appropriate and necessary to amend Section 50-50 of the City's Code of Ordinances in order to adopt new regulations relating to the denial of licenses and permits for placement of wireless facilities and utilities in the City's Right-of-Way; and

WHEREAS, the City of Sedalia, Missouri has determined that it has the authority to manage the use of its public Right-of-Way.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SEDALIA, MISSOURI as follows:

Section 1. Chapter 50, Article III, Section 50-50 related to the Denial Of An Application For A Right-Of- Way Permit is hereby amended to read as follows:

“Sec. 50-50. - Denial of an application for a right-of-way permit, when—Revocation of a permit, when—Action for review by court.

- (a) The city may deny an application for a right-of-way permit, if denial is deemed to be in the public interest. In determining whether a denial is in the public interest, the City may consider all relevant factors including but not limited to:
- (1) Failure to provide a complete application. The right-of-way user failed to provide all the necessary information requested by the city for managing the public right-of-way.
 - (2) The right-of-way user has failed to return the public right-of-way to its previous condition under a previous permit or after prior excavations by the applicant or right-of-way user.
 - (3) The right-of-way user has delinquent fees, costs, or expenses owed to the city from a previous permit.
 - (4) The extent to which the right-of-way space where the permit is sought is available; relevant factors for the availability of right-of-way space include but are not limited to:

- a. Whether the applicant's placement of their equipment, facilities, or structures would overwhelm the immediate area rendering it out of scale with adjacent structures, plantings, landscaping, and already existing uses of the right-of-way;
 - b. The competing demands for the particular space in the right-of-way;
 - c. The applicability of any ordinance or other regulations, including City zoning regulations, that affect the location of or other standards for facilities in the right-of-way.
 - d. The placement of above ground facilities, structures, or equipment that would result in less than seventy-five (75) linear feet distance between other existing or new above ground facilities.
 - e. The placement of facilities, structures, or equipment that are flush with the ground, that would result in less than seventy-five (75) linear feet distance between other existing or new above ground or flush with the ground facilities, structures, or equipment.
- (5) Placement of equipment, facilities, or structures in a right-of-way that are more than ten (10) feet from a property line. If it is impractical to place equipment, facilities, or structures within ten (10) feet of a property line, at the City's discretion, a permit for placement of equipment, facilities, or structures more than ten (10) feet from a property line in a right-of-way may be issued if the right-of-way user provides adequate landscaping that conforms with the surrounding aesthetics of the property.
- (6) Placement of equipment, facilities, or structures outside the City's right-of-way.
- (7) Refusal to comply with alternative right-of-way work methods, locations, or other reasonable conditions required by the director of public works or his/her representative.
- (8) The city has provided the right-of-way user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the permit application or a reasonable alternative route that will result in neither additional installation expense up to ten percent to the right-of-way user nor a declination of service quality;
- (9) The city determines that denial is necessary to protect the public health and safety, provided that the authority of the city does not extend to those items under the jurisdiction of the public service commission, such denial shall not interfere with a public utility's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis; or
- (10) The area is environmentally sensitive as defined by state statute or federal law or is a historic district or culturally sensitive area as defined by applicable federal, state, or local laws.

- (b) The city may, after reasonable written notice and an opportunity to cure not longer than 30 days, which cure period may be immediate if certain activities must be stopped to be protective of public safety or health, revoke a right-of-way permit granted to a right-of-way user, with or without fee refund. The cure period shall be extended by the director of public works on good cause shown by the right-of-way user. The city may impose a penalty as established by the city until the breach is cured, but only in the event of a substantial breach of the terms and material conditions of the permit. A substantial breach by a permittee includes but is not limited to:
- (1) A material violation of a provision of the right-of-way permit or this article;
 - (2) An evasion or attempt to evade any material provision of the right-of-way 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 the right-of-way permit application;
 - (4) A failure to complete work by the date specified in the right-of-way permit, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; and
 - (5) A failure to correct, within the time specified by the city, work that does not conform to applicable national safety codes, industry construction standards, this article, or local safety codes that are no more stringent than national safety codes, upon inspection and notification by the city of the faulty condition.
- (c) Any breach of the terms and conditions of a right-of-way permit shall also be deemed a violation of this article, and in lieu of revocation the director of public works may initiate prosecution of the right-of-way user for such violation.
- (d) The city shall require right-of-way users to obtain a right-of-way permit, except in an emergency, prior to performing excavation work within a public right-of-way. The city shall promptly, but not longer than 30 days from receipt, process all completed permit applications. If the city fails to act on an application for a right-of-way permit within 30 days, the application shall be deemed approved.
- (e) A right-of-way user that has been denied a right-of-way permit, has had its right-of-way permit revoked, believes that the fees imposed on the public right-of-way user by the city do not conform to the requirements of section 50-54 believes the city has violated any provision of sections 50-45 to 50-55, or asserts any other issues related to the use of the public right-of-way, may bring an action for review in any court of competent jurisdiction in this state.
- (f) Exceptions. Projects with a construction plan approved by the city are not required to obtain a separate right-of-way permit for any work contained in the construction plan

approval. City-sponsored capital improvement projects, requiring utility adjustments, are not required to obtain a separate right-of-way permit for any directly associated adjustments or new facilities.”

Section 2. This ordinance shall be in full force and effect from and after its passage and approval.

Section 3. The provisions of any ordinance or code section in conflict with any provision of this ordinance are hereby repealed to the extent of such conflict.

Section 4. The provisions of this ordinance are severable and if any provision hereof is declared invalid, unconstitutional, or unenforceable, such determination shall not affect the validity of the remainder of this ordinance.

Section 5. The City Clerk is hereby authorized to correct any scribes’ errors contained herein or made in amending the City Code.

Read two times by title, copies of the proposed ordinance having been made available for public inspection prior to the time the bill is under consideration by the Council and passed by the Council of the City of Sedalia, Missouri this 5th day of August, 2024.



Presiding Officer of the Council

Approved by the Mayor of said City this 5th day of August, 2024.



Andrew L. Dawson, Mayor

ATTEST:



Jason S. Myers
City Clerk