

## ORDINANCE 70917

### BOARD BILL NO.225 INTRODUCED BY ALDERMAN TOM OLDENBURG

1           An Ordinance adding a new Chapter under Title 25, the Building Code, to be known  
2 as “Small Wireless Facilities and Micro Wireless Facilities;” containing a severability clause  
3 and an emergency clause.

#### 4   **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

5   **SECTION ONE.** Title and Intent. Adding a new Chapter to Title 25—Buildings and  
6 Construction—to be known as “Small Facilities and Micro Wireless Facilities.” The purpose  
7 of this Chapter is to encourage and streamline the deployment of small wireless and micro  
8 wireless facilities in the City and to help ensure that robust and dependable wireless radio-  
9 based communication services and networks are available throughout the City, consistent  
10 with state and federal law.

#### 11   **SECTION TWO.** Definitions.

##### 12           A. Definitions and Usage-General.

13           For the purposes of this Chapter, the following terms, phrases, words, and  
14 abbreviations shall have the meanings given herein, unless otherwise expressly  
15 stated. When not inconsistent with the context, words used in the present tense  
16 include the future tense and vice versa, words in the plural number include the  
17 singular number and vice versa, and masculine gender includes the feminine  
18 gender and vice versa. The words “shall” and “will” are mandatory, and “may” is  
19 permissive. Unless otherwise expressly stated or contrary to the context, those  
20 terms, phrases, words, and abbreviations not defined herein shall be given the  
21 meaning set forth in Sections 67.5110-67.5121, RSMo., and if not defined therein,

**ORDINANCE 70917**

**BOARD BILL NO.225 INTRODUCED BY ALDERMAN TOM OLDENBURG**

- 1                   the City Code, and, if not defined therein, their common and ordinary meaning.
- 2                   For further convenience, the first letter of terms, phrases, words and abbreviations

defined in this Chapter have been capitalized, but an inadvertent failure to capitalize such letter shall not affect its meaning, nor shall the inadvertent capitalization of the first letter of a term, phrase, word, or abbreviation not defined herein affect the meaning thereof.

B. “Antenna”, communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;

C. “Applicable Codes”, include any City codes incorporating uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes enacted to prevent physical property damage or reasonably foreseeable injury to persons;

D. “Applicant”, any person who submits an application and is a Wireless Provider;

E. “Application”, a request submitted by an applicant to the City for a permit to collocate Small Wireless Facilities on a Utility Pole or Wireless Support Structure, or to approve the installation, modification or replacement of a Utility Pole;

F. “Collocate” or “Collocation”, to install, mount, maintain, modify, operate, or replace Small Wireless Facilities on or immediately adjacent to a Wireless Support Structure or Utility Pole, provided that the Small Wireless Facility Antenna is located on the Wireless Support Structure or Utility Pole;

G. “Communications Facility”, the set of equipment and network components, including wires, cables, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); a provider of information service, as defined in 47

- 1 U.S.C. Section 153(24); or a Wireless Services Provider; to provide  
2 communications services, including cable service, as defined in 47 U.S.C. Section  
3 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); and  
4 information service, as defined in 47 U.S.C. Section 153(24); Wireless  
5 Communications Service; or other one-way or two-way communications service;
- 6 H. “Communications Service Provider”, a cable operator, as defined in 47 U.S.C.  
7 Section 522(5); a provider of information service, as defined in 47 U.S.C. Section  
8 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 152(51);  
9 or a wireless provider;
- 10 I. “Decorative Pole”, a City Utility Pole that is specially designed and placed for  
11 aesthetic purposes;
- 12 J. “Fee”, a one-time, nonrecurring charge;
- 13 K. “Permit”, a written authorization required by the City to perform an action or  
14 initiate, continue or complete a project;
- 15 L. “Person”, an individual, corporation, limited liability company, partnership,  
16 association, trust, or other entity or organization, including an authority;
- 17 M. “Rate”, a recurring charge;
- 18 N. “Right- of- Way”, the area on, below, or above a public roadway, highway, street,  
19 sidewalk, alley, or similar property used for public travel, but not including a  
20 federal interstate highway, railroad right-of-way or private easement;
- 21 O. “Small Wireless Facility”, a wireless facility that meets both of the following  
22 qualifications:

- 1                   1. Each Wireless Provider's antenna could fit within an enclosure of no more  
2                   than six cubic feet in volume; and
- 3                   2. All other equipment associated with the Wireless Facility, whether ground  
4                   or pole mounted, is cumulatively no more than twenty-eight cubic feet in  
5                   volume, provided that no single piece of equipment on the Utility Pole  
6                   shall exceed nine cubic feet in volume; and no single piece of ground  
7                   mounted equipment shall exceed fifteen cubic feet in volume, exclusive of  
8                   equipment by an electric utility or municipal electric utility to power the  
9                   Small Wireless Facility.

10                  The following types of associated ancillary equipment shall not be included in the  
11                  calculation of equipment volume: electric meter, concealment elements,  
12                  telecommunications demarcation box, grounding equipment, power transfer  
13                  switch, cut-off switch, and vertical cable runs and related conduit for the  
14                  connection of power and other services;

15                  P. "Stealth", integrated as an architectural feature of a structure or that is designed to  
16                  camouflage or conceal the presence of the Wireless Facility or Antenna so that the  
17                  purpose of the Wireless Facility or Antenna is not readily apparent to a casual  
18                  observer however, such term shall not include wireless support structures, electric  
19                  transmission structures, or break-away poles owned by the state Highways and  
20                  Transportation Commission;

21                  Q. "Utility Pole", a pole or similar structure that is or may be used in whole or in part  
22                  by or for wireline communications, electric distribution, lighting, traffic control,  
23                  signage, or a similar function, or for the Collocation of Small Wireless Facilities;

1 R. “Wireless Facility”, equipment at a fixed location that enables wireless  
2 communications between user equipment and a communications network,  
3 including equipment associated with wireless communications and radio  
4 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power  
5 supplies and comparable equipment, regardless of technological configuration.  
6 The term includes Small Wireless facilities. The term does not include:

- 7 1. The structure or improvements on, under, or within which the equipment  
8 is Collocated;
- 9 2. Coaxial or fiber-optic cable between Wireless Support Structures or  
10 Utility Poles;
- 11 3. Coaxial or fiber-optic cable not directly associated with a particular Small  
12 Wireless Facility; or
- 13 4. A Wireline Backhaul Facility

14 S. “Wireless Infrastructure Provider”, any Person, including a Person authorized to  
15 provide telecommunications service in the state, that builds or installs wireless  
16 communication transmission equipment or wireless facilities but that is not a  
17 Wireless Services Provider;

18 T. “Wireless Provider”, a wireless infrastructure provider or a Wireless Services  
19 Provider;

20 U. “Wireless Services”, any services using licensed or unlicensed spectrum,  
21 including the use of WiFi, whether at a fixed location or mobile, provided to the  
22 public using wireless facilities;

23 V. “Wireless Services Provider”, a Person who provides wireless services;

1 W. “Wireless Support Structure”, an existing structure, such as a monopole or tower,  
2 whether guyed or self-supporting, designed to support or capable of supporting  
3 wireless facilities; an existing or proposed billboard; an existing or proposed  
4 building; or other existing or proposed structure capable of supporting wireless  
5 facilities, other than a structure designed solely for the Collocation of Small  
6 Wireless Facilities. Such term shall not include a Utility Pole.

7 X. “Wireline Backhaul Facility”, a physical transmission path, all or part of which is  
8 within the Right-of-Way, used for the transport of communication data by wire  
9 from a wireless facility to a network.

10 **SECTION THREE. Permits for Wireless Facilities Outside the Right-of-Way.** The

11 provisions of this section shall apply to the permitting of small wireless facilities and micro  
12 wireless facilities to be installed by or for a wireless provider outside the right-of-way.

13 Unless otherwise indicated, nothing in this Chapter abrogates existing requirements for the  
14 location or collocation of a wireless facility that is not a small or micro wireless facility.

15 A. Wireless providers or their agents shall apply for and obtain a permit pursuant to  
16 all applicable codes to locate or collocate a small wireless facility or micro wireless  
17 facility. The permit application fee is set forth in the applicable codes. The city shall  
18 receive applications for, process and issue such permits subject to the following  
19 requirements.

20 (1) An applicant shall not be required to perform services or provide goods  
21 unrelated to the permit, such as in-kind contributions to the City, including  
22 reserving fiber, conduit, or pole space for the City;

23 (2) An applicant shall not be required to provide more information to obtain a  
24 permit than communications service providers that are not wireless providers,

1 provided that an applicant shall include construction and engineering  
2 drawings and information demonstrating compliance with the criteria in  
3 subdivision (9) of this subsection and an attestation that the small wireless  
4 facility complies with the volumetric limitations set forth in the definition  
5 section for small wireless facilities;

6 (3) An applicant shall not be required to place small wireless facilities on any  
7 specific utility pole or category of poles or require multiple antenna systems  
8 on a single utility pole;

9 (4) There is no limit as to the placement of small wireless facilities by  
10 minimum horizontal separation distances;

11 (5) An applicant shall comply with reasonable, objective, and cost-effective  
12 concealment and stealth requirements as set forth by the regulations adopted  
13 by either the Board of Public Service or the Building Commissioner and  
14 safety requirements as provided herein provided that stealth concealment  
15 requirements are published in advance by the Board of Public Service or the  
16 Building Commissioner and are no more burdensome than those required as  
17 part of other telecommunications infrastructure deployments. If both the  
18 Board of Public Service and the Building Commissioner promulgate  
19 concealment regulations, then the Building Commissioner's regulations shall  
20 control for purposes of this Chapter;

21 (6) An applicant that is not a wireless services provider shall provide  
22 evidence of agreements or plans demonstrating that the small wireless  
23 facilities will be operational for use by a wireless services provider within one  
24 year after the permit issuance date, unless the City and the applicant agree to



1 extend this period or if delay is caused by lack of commercial power or  
2 communications transport facilities to the site and the applicant notifies the  
3 City thereof. An applicant that is a wireless services provider shall provide the  
4 information required by this subdivision by attestation;

5 (7) Within fifteen (15) days of receiving an application, the City shall  
6 determine and notify the applicant in writing whether the application is  
7 complete. If an application is incomplete, the City shall specifically identify  
8 the missing information in writing. The processing deadline in subdivision (8)  
9 of this subsection shall be tolled from the time the City sends the notice of  
10 incompleteness to the time the applicant provides the missing information.  
11 That processing deadline may also be tolled by agreement of the applicant and  
12 the City;

13 (8) An application for collocation shall be processed on a nondiscriminatory  
14 basis and deemed approved if the City fails to approve or deny the application  
15 within forty-five (45) days of receipt of the application. An application for  
16 installation of a new, modified, or replacement utility pole outside the right-  
17 of-way and associated with a small wireless facility shall be processed on a  
18 nondiscriminatory basis and deemed approved if the City fails to approve or  
19 deny the application within sixty (60) days of receipt of the application;

20 (9) The City may deny a proposed collocation of a small wireless facility or  
21 installation, modification, or replacement of a utility pole outside the right-of-  
22 way only if the action proposed in the application could reasonably be  
23 expected to:

- 1 (a) Materially interfere with the safe operation of traffic control
- 2 equipment or City-owned communications equipment;
- 3 (b) Materially interfere with sight lines or clear zones for
- 4 transportation, pedestrians, or nonmotorized vehicles;
- 5 (c) Materially interfere with compliance with the Americans with
- 6 Disabilities Act, 42 U.S.C. Sections 12101 to 12213, or similar federal
- 7 or state standards regarding pedestrian access or movement;
- 8 (d) Materially obstruct or hinder the usual travel or public safety on
- 9 the right-of-way;
- 10 (e) Materially obstruct the legal use of the right-of-way by the City, a
- 11 utility, or other third party;
- 12 (f) Fail to comply with reasonable and nondiscriminatory spacing
- 13 requirements of general application adopted by ordinance or
- 14 regulations promulgated by the state highways and transportation
- 15 commission that concern the location of ground mounted equipment
- 16 and new utility poles, subject to wireless provider requests for
- 17 exception or variance;
- 18 (g) Fail to comply with applicable codes, including nationally
- 19 recognized engineering standards for utility poles or wireless support
- 20 structures;
- 21 (h) Fail to comply with the reasonably objective and documented
- 22 aesthetics of a decorative pole and the applicant does not agree to pay
- 23 to match the applicable decorative elements; or

1 (i) Fail to comply with reasonable and nondiscriminatory  
2 undergrounding requirements contained in City ordinances as of  
3 January 1, 2018, or subsequently enacted for new developments, that  
4 require all new utility facilities in the area to be placed underground  
5 and prohibit the installation of new or the modification of existing  
6 utility poles in a right-of-way without prior approval, including by  
7 wireless provider requests for exception or variance;

8 (10) The City shall document the complete basis for a denial in writing, and  
9 send the documentation to the applicant with the communication denying an  
10 application. The applicant may cure the deficiencies identified by the City and  
11 resubmit the application within thirty (30) days of the denial without paying  
12 an additional application fee. The City shall approve or deny the revised  
13 application within thirty (30) days. Any subsequent review shall be limited to  
14 the deficiencies cited in the denial;

15 (11) Applications.

16 (a) An applicant may file a consolidated application and receive a  
17 single permit for the collocation of multiple small wireless facilities;  
18 provided, however, the denial of one or more small wireless facilities  
19 in a consolidated application shall not delay processing of any other  
20 small wireless facilities in the same batch; and

21 (b) An application may include up to twenty separate small wireless  
22 facilities, provided that they are for the same or materially same design  
23 of small wireless facility being collocated on the same or materially  
24 the same type of utility pole or wireless support structure, and

1 geographically proximate. If the City receives individual applications  
2 for approval of more than fifty small wireless facilities or consolidated  
3 applications for approval of more than seventy-five small wireless  
4 facilities within a fourteen (14) day period, whether from a single  
5 applicant or multiple applicants, the City may, upon its own request,  
6 obtain an automatic thirty (30) day extension for any additional  
7 collocation or replacement or installation application submitted during  
8 that fourteen (14) day period or in the fourteen (14) day period  
9 immediately following the prior fourteen (14) day period. The City  
10 shall promptly communicate its request to each affected applicant. In  
11 rendering a decision on an application for multiple small wireless  
12 facilities, the City may approve the application as to certain individual  
13 small wireless facilities while denying it as to others based on  
14 applicable requirements and standards, including those identified in  
15 this subsection. The City's denial of any individual small wireless  
16 facility or subset of small wireless facilities within an application shall  
17 not be a basis to deny the application as a whole; notwithstanding the  
18 foregoing, the FCC "shot clock" review periods set forth in 47 CFR  
19 1.6003 shall not be exceeded regardless of the number of "batched"  
20 applications.

21 (12) Installation or collocation for which a permit is granted under this  
22 Chapter shall be completed within one year after the permit issuance date  
23 unless the City and the applicant agree to extend this period, or the applicant

1 notifies the City that the delay is caused by a lack of commercial power or  
2 communications transport facilities to the site.

3 (13) Approval of an application authorizes the applicant to:

4 (a) Undertake the installation or collocation; and

5 (b) Operate and maintain the small wireless facilities and any  
6 associated utility pole covered by the permit for a period of ten years,  
7 which shall be renewed for equivalent durations so long as the  
8 facilities and poles remain in compliance with the criteria set forth in  
9 subdivision (9) of this section, unless the applicant and the City agree  
10 to an extension term of less than ten years. The provisions of this  
11 paragraph shall be subject to the right of the City to require, upon  
12 adequate notice and at the facility owner's own expense, relocation of  
13 facilities as may be needed in the interest of public safety and  
14 convenience, and the applicant's right to terminate at any time;

15 (14) In determining whether sufficient capacity exists to accommodate the  
16 attachment of a new small wireless facility, the City shall take into account  
17 that any grant of access hereunder shall be subject to a reservation to reclaim  
18 such space, when and if needed, to meet the pole owner's core utility purpose  
19 or documented plan projected at the time of the application pursuant to a bona  
20 fide development plan; and

21 (15) In emergency circumstances that result from a natural disaster or  
22 accident, the City may require the owner or operator of a wireless facility to  
23 immediately remove such facility if the wireless facility is obstructing traffic  
24 or causing a hazard on the City's roadway. In the event that the owner or

operator of the wireless facility is unable to immediately remove the wireless facility, the City may remove the wireless facility from the roadway or other position that renders the wireless facility hazardous. Under these emergency circumstances, the City shall not be liable for any damage caused by removing the wireless facility and may charge the owner or operator of the wireless facility the City's reasonable expenses incurred in removing the wireless facility.

B. A permit is not required for:

- (1) Routine maintenance on previously permitted small wireless facilities;
- (2) The replacement of small wireless facilities with small wireless facilities that are the same or smaller in size, weight, and height; or
- (3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes.

C. For work described in subdivisions B(1) and B(2) of this section that involves different equipment than that being replaced, the wireless services provider shall submit a description of such new equipment so that the City may maintain an accurate inventory of the small wireless facilities at that location.

D. No approval for the installation, placement, maintenance, or operation of a small wireless facility under this Chapter shall be construed to confer authorization for the provision of cable television service, or installation, placement, maintenance, or operation of a wireline backhaul facility or communications facility, other than a small wireless facility, in the right-of-way or outside the right-of-way.

1           **SECTION FOUR. Severability Clause.** If any section, subsection, sentence, clause,  
2 phrase or portion of the Ordinance is held invalid or unconstitutional by any court of  
3 competent jurisdiction, such portion shall be deemed a separate, distinct and independent  
4 provisions, and such holding shall not affect the validity of the remaining portions thereof.

5           **SECTION FIVE. Emergency Clause.** The passage of this ordinance being deemed  
6 necessary for immediate preservation of the public peace, health and safety, an emergency is  
7 hereby declared to exist within the meaning of Section 20 of Article IV of the Charter, and  
8 this ordinance shall be in full force and effect immediately upon its passage and approval by  
9 the Mayor.