

ORDINANCE NO. _____

Ordinance to amend sections 11.11(4)(a), 11.11(5)(a)2., 11.11(9), and 11.18(3) and create section 11.20 of the West Allis Municipal Code relating to the installation and maintenance of small wireless facilities

Whereas 2019 Wisconsin Act 19 was enacted on July 10, 2019; and

Whereas pursuant to Wis. Stat. § 66.0414(2)(d), state law requires that the City enact an ordinance that implements rates, fees, and terms for access to the right-of-way that comply with Wis. Stat. § 66.0414(2); and

Whereas the City seeks to enact regulations that are consistent with state law and also protect the public health, safety, and welfare;

Now, therefore, the Common Council of the City of West Allis, Milwaukee County, do ordain as follows:

Part 1. Code Revision

Section 11.11(4)(a) of the Municipal Code of the City of West Allis is hereby amended to read as follows:

Permit Requirement.

- (a) Special Right-of-Way Permit Required. Except as otherwise provided in Section 11.11, or other Chapters of the Revised Municipal Code, no person shall excavate, obstruct or occupy the right-of-way or place or collocate facilities in a right-of-way without first obtaining a special right-of-way permit [see Subsection 11.18(3)] from the City Engineer. No person shall engage or continue in construction in the right-of-way beyond the date or area specified in the permit, unless such person makes application for a permit to perform such additional work before the expiration of the initial permit. No permit is necessary under this paragraph for routine maintenance, the replacement of a small wireless facility with a small wireless facility that is substantially similar to, or the same size or smaller than, the existing small wireless facility, or the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code.

Part 2. Code Revision

Section 11.11(5)(a)2. of the Municipal Code of the City of West Allis is hereby amended to read as follows:

2. Submission of a completed permit application form, including the following:
- a. If the proposed project involves the installation of poles or towers the applicant shall submit scaled drawings of the poles or towers and all proposed attachments. Details with descriptions of all attachments shall be shown on submitted drawings.
 - b. The applicant shall submit drawings, plans and profiles identifying in detail the location of the proposed project and any affected right-of-way, public utility easements, and the location of all existing and proposed facilities and obstructions within the project area in addition to installation details.
 - c. If the proposed project involves the installation or modification of poles or towers in the right-of-way, ~~the applicant must submit evidence sufficient to demonstrate that the applicant is prohibited from using existing poles or towers (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law.~~ the city engineer may propose an alternate location to construct or modify a utility pole for collocation, and the applicant shall use the alternate location if it has the right to use the alternate structure on reasonable terms

and conditions and the alternate location is technically feasible and does not impose material additional costs.

- d. If the proposed project involves the installation of poles or towers in the right-of-way that are greater than ten (10) feet taller than existing poles or towers nearby in the right-of-way, the applicant must submit evidence to demonstrate that:
- (i) The greater height is required to accomplish the applicant's purpose;
 - (ii) The applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibited, or prohibited by law; and
 - (iii) The pole or tower, due to its height and size, poses no greater danger to health, safety, and welfare of the public than existing poles or towers nearby in the right-of-way.
- e. If the applicant is a communications service provider installing a small wireless facility, certification that the facility:
- (i) Will comply with relevant federal communications commission regulations concerning radio frequency emissions from radio transmitters and unacceptable interference with public safety spectrum, including compliance with the abatement and resolution procedures for interference with public safety spectrum established by the federal communications commission set forth in 47 CFR 22.970 to 22.973 and 47 CFR 90.672 to 90.675.
 - (ii) Will not materially interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians, federal Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

Part 3. Code Revision

Section 11.11(9) of the Municipal Code of the City of West Allis is hereby amended to read as follows:

(9) Fall Radius/Breakaway Installation Requirements. The installation of any permanent facilities or structures in the right-of-way shall comply with the following standards:

(a) Poles and other utility structures over sixty (60) feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.

(b) Rigid non-breakaway poles and other utility structures shall be located a minimum of ~~ten (10)~~ two (2) feet from roadway curbs or shoulders and behind existing or future sidewalks.

(c) Any mobile service support structure that is constructed on or adjacent to a parcel of land that is subject to a zoning ordinance that permits single-family residential use on that parcel shall be set back at least the height of the proposed structure from the lot lines of any such parcels. This provision does not apply to an existing or new utility pole, or wireless support structure in a right-of-way that supports a small wireless facility, if the pole or facility meets the height limitations in Wis. Stat. §§ 66.0414(2)(e)2 and 3.

Part 4. Code Revision

Section 11.20 of the Municipal Code of the City of West Allis is hereby created to read as follows:

11.20 Requirements for Facilities in Right-of-Way

Unless compliance is technically infeasible or inconsistent with state law in a particular application, any infrastructure deployments in the right-of-way shall comply with the following requirements:

- (1) **Compatible Color.** Each new or modified facility and all related components must be compatible in color and shape to similar facilities in the immediate area and must minimize the physical and visual impact on the area.
- (2) **Antenna Shroud.** Each small wireless facility antenna shall be located entirely within a shroud or enclosure that minimizes the physical and visual impact on the area.
- (3) **No Pruning.** No new facility may be installed in a manner that requires the removal or pruning of trees, shrubs or any plants other than turf grass.
- (4) **Wire Concealment.** All cables, wires, and connectors related to a facility must be concealed within a facility, conduit, or similar enclosure that is similar in color to adjacent structures or components. .
- (5) **Background Colors.** Any small wireless facility or unconcealed cables, wires, and connectors shall match the color of the background upon which they are attached. In the case of existing wood poles, finishes of conduit shall be zinc, aluminum or stainless steel, or colored to match those metal finishes and equipment cabinets shall be the color of brushed aluminum.
- (6) **Owner Identification.** Any small wireless facility owner shall post its name, location identifying information, and emergency telephone number in an area on the cabinet of the small wireless facility that is visible to the public. Signage required under this section shall not exceed 4 inches x 6 inches, unless otherwise required by law (e.g. RF ground notification signs) or the City. If no cabinet exists, the signage shall be placed at the base of the utility pole that supports the small wireless facility.
- (7) **Logos/Decals:** The small wireless facility owner shall remove or paint over unnecessary equipment manufacturer decals. The color shall match the surface color. Small wireless facilities and wireless support structures shall not include advertisements and may only display information required by a federal, state or local agency. The small wireless facility operator/permittee shall utilize the smallest and lowest visibility radio-frequency (RF) warning sticker required by government or electric utility regulations. Placement of the RF sticker shall be as close to the antenna as possible.
- (8) **Cooling Fans:** In residential areas, the small wireless facility owner shall use a passive cooling system. In the event that a fan is needed, the small wireless facility owner shall use a cooling fan with a low noise profile.
- (9) **Support Equipment:** Enclosures and cabinets, including electric meters, shall be as small as possible. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching color and materials of the wireless support structure unless other materials or colors are approved by the City. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.
- (10) **Placement Requirements:** All facilities, including small wireless facilities and support equipment, shall be located in accordance with the following:
 - (a) Small cell wireless facilities and wireless support equipment structures shall be located at least 250 feet away, radially, from another small cell wireless facility and wireless support equipment structure.
 - (b) Placement shall be in a manner that does not impede, obstruct, or hinder usual public pedestrian or vehicular travel or public safety on a right-of-way.
 - (c) Placement shall be in a manner that does not obstruct the legal use of a right-of-way by a utility provider.
 - (d) Placement shall be in a manner that does not negatively impact the structural integrity of the associated wireless support equipment structure.
 - (e) Placement shall be in alignment with existing trees, utility poles, and streetlights.
 - (f) Placement shall be equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.

- (g) Placement shall be with appropriate clearance from existing utilities including privately owned water services, privately owned sanitary sewer laterals and privately owned storm sewer laterals.
- (h) Placement shall be along the secondary property street frontage (side yards). If this is not possible some small cell facilities may be placed in the ROW in front of single family or two family residential properties only at the intersection of property lines or equidistance from any two existing structures so as not to significantly create a new obstruction to property sight lines. The facilities shall not be installed between the perpendicular extensions of the primary street-facing wall plane of any single or two-family residence.
- (i) In areas of the City where multiple structures abut each other, new facilities shall not be located directly in front of an entrance or window of any existing structure.
- (j) Placement shall not be within sight triangles at street intersections.
- (k) Placement shall be 10 feet away from the triangle extension of an alley way flare.

Part 5. Code Revision

Section 11.18(3) of the Municipal Code of the City of West Allis is hereby amended to read as follows:

(3) Special right-of-way	\$60100
For collocating 5 or fewer small wireless facilities	<u>\$500</u>
For each small wireless facility in excess of 5	<u>\$100</u>
For the installation/replacement of and collocation upon a utility pole	<u>\$1,000</u>

Part 6. Inconsistent Law Repealed

All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Part 7. Severability

The provisions of this ordinance are severable. If any provision of this ordinance is invalid, or if the application of this ordinance to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

Part 8. Effective Date

This ordinance shall take effect and be in force as of October 1, 2019.