

CITY OF APPLE VALLEY  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF APPLE VALLEY, MINNESOTA, AMENDING  
CHAPTER 97 OF THE CITY CODE REGULATING SMALL WIRELESS  
FACILITIES UNDER THE RIGHT-OF-WAY MANAGEMENT REGULATIONS

The City Council of Apple Valley ordains:

Section 1. Section 97.02 of the Apple Valley City Code is hereby amended to revise or add the following definition to read as follows:

**CITY MANAGEMENT COSTS.** The actual costs incurred by the city for public rights-of-way management, including, but not limited to, costs incurred in connection with the registration process, the right-of-way excavation or obstruction permit process, the small wireless facility conditional use permit, if any, process, the inspection of project work and restoration and enforcement and correction of non-complying project work, mapping of public right-of-way users and maintenance and regulation of public right-of-ways occupied by public right-of-way users. Management costs do not include payment by a public right-of-way user for the use of the right-of-way, unreasonable fees of a third-party contractor used by a local government unit as part of managing its public right-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the public right-of-way user, or a local government unit, or the fees and cost of litigation relating to the interpretation of the act or any ordinance enacted under the act, or the city fees and costs related to appeals taken pursuant to this Chapter.

**COLLOCATE OR COLLOCATION.** 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 local government unit.

**MICRO WIRELESS FACILITY.** A small wireless facility that is no larger than twenty-four (24) inches long, fifteen (15) inches wide, and twelve (12) inches high, and whose exterior antenna, if any, is no longer than eleven (11) inches.

**SMALL WIRELESS FACILITY.**

(1) A wireless facility that meets both of the following qualifications:

(i) Each antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six (6) cubic feet; and

(ii) All other wireless equipment associated with the small wireless facility, excluding 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, is in aggregate no more than twenty-eight (28) cubic feet in volume; or

(2) a micro wireless facility.

**UTILITY POLE.** A pole that is used in whole or in part to facilitate telecommunications or electric service.

**UTILITY SERVICE** . Services provided by:

- (1) A public utility as defined in Minnesota Statutes;
- (2) A telecommunications, wireless service, pipeline, community antenna television, fire and alarm communications, water, sewer, electricity, light, heat, cooling energy, or power services;
- (3) A corporation organized for the purposes set forth in M.S. Chapter 300;
- (4) A district heating or cooling system; or
- (5) A cable communication system as defined in Minnesota Statutes.

**WIRELESS FACILITY.**

(a) Wireless facility means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

- (1) equipment associated with wireless service;
  - (2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;
- and

(3) a small wireless facility.

(b) Wireless facility does not include:

- (1) wireless support structures;
- (2) wireline backhaul facilities; or
- (3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

**WIRELESS SERVICE.** 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 a cable service under United States Code, title 47, section 522, clause (6).

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

**WIRELINE BACKHAUL FACILITY.** A facility used to transport communications data by wire from a wireless facility to a communications network.

Section 2. Section 97.04 of the Apple Valley City Code is hereby amended to revise §97.04(A) to read as follows:

**§ 97.04 REGISTRATION REQUIREMENT.**

(A) Registration. As of the effective date of this chapter, any public right-of-way user, including any person or entity with installation and maintenance responsibilities by lease, sublease, collocation agreement or assignment, which owns or controls a facility within any public right-of-way, or any portion thereof, shall register with the city. Registration shall be deemed completed upon the public right-of-way user submitting to the city a completed registration form furnished by the city and paying the registration fee. A right-of-way user is required to update its registration within 60 days of any change of the information contained in a current registration statement.

\* \* \* \*

Section 3. Section 97.05 of the Apple Valley City Code is hereby amended to revise and add §97.05(A)(3) to read as follows:

**§97.05 PERMIT REQUIREMENT.**

(A) *Permit required.* Except as otherwise provided in this code, no person or public right-of-way user may obstruct or excavate any public right-of-way or install or collocate a small wireless facility or support structure without first having obtained the appropriate permit from the city unless another reporting process is approved by the Director or his/her designee.

\* \* \* \*

(3) A person seeking to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or areas zoned for or allowing single family residential uses, or in an established historic district, is also required to apply for and obtain a conditional use permit under Chapter 155 of this Code.

Section 4. Section 97.05 of the Apple Valley City Code is hereby amended to add §97.05(B)(2) to read as follows:

**§97.05 PERMIT REQUIREMENT.**

(B) *Permit Applications.*

\* \* \* \*

(2) Permits for multiple telecommunications facilities, including small wireless facilities, may be filed in consolidated applications as required by state law (M.S. section 237.163, Subd. 3a). Permit applications that propose collocation of facilities shall

indicate to extent practicable the owner of the other facility or facilities, and if the City is the owner of those facilities, the application shall include a request for a collocation agreement using a form and providing such information as required by the City.

Section 5. Section 97.05 of the Apple Valley City Code is hereby amended to revise Section 97.05(C) to read as follows:

**§97.05 PERMIT REQUIREMENT.**

\* \* \* \*

(C) *Issuance of permit.*

(1) If the applicant has satisfied the requirements of this Chapter, the city shall issue a permit within ninety (90) days of receiving a completed application, or shall provide written reasons for denial of the application if the city believes the requirements have not been satisfied, unless that time period is extended or tolled as specified in state law, (M. S. §237.163, Subd. 3c). If the city receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the city may extend the 90-day deadline by an additional 30 days. If the city elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.

(2) The city may deny a permit for the following reasons:

(4a) The applicant failed to fully comply with the application requirements herein.

(2b) The city has initiated revocation of a prior permit issued under this chapter against the applicant.

(3c) The applicant has violated within the past two years any requirements of this chapter.

(4d) The time schedule for the project will conflict or interfere with a community exhibition, celebration, festival, or any other similar community event in the area of the project.

(5e) The time schedule for the project conflicts with scheduled public improvement of the public right-of-way.

(6f) The proposed project violates a provision of this Code.

(7g) The proposed project is adverse to the public health, safety, and welfare by interfering with the safety and convenience of ordinary travel over the public right-of-way, or endangers the public right-of-way and its users based on one or more of the following factors:

- (a~~1~~) The extent of public right-of-way area available;
- (b~~2~~) The competing demands for the particular proposed area space in the public right-of-way;
- (e~~3~~) The availability of other locations in the public right-of-way or in other public rights-of-way for the facility(s) or equipment of the permit applicant;
- (d~~4~~) The applicability of an ordinance or other regulation that affects the location of a facility or equipment in the public right-of-way;
- (e~~5~~) The applicant's prior compliance with the terms and conditions of its franchise, this section and other applicable ordinances and regulations;
- (f~~6~~) The condition and age of the public right-of-way and the city's scheduled reconstruction thereof; and
- (g~~7~~) The costs of disruption to the public and damage to the public right-of-way balanced against any benefits to the public served by an expansion into additional parts of the public right-of-way for facilities or equipment.

Any denial of a right-of-way or small wireless facility permit must be made in writing and must set forth the basis for the denial. The city must notify the applicant in writing within three business days of the decision to deny or revoke a permit. If a permit application is denied, the applicant may cure the deficiencies identified by the city and resubmit its application. If the applicant resubmits the application within 30 days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The city must approve or deny the revised application within 30 days after the revised application is submitted.

(3) Permit applications that propose collocation of facilities on city-owned poles, buildings, or other structures owned or under the control of the city shall be authorized by the Council upon terms and conditions established by the Council. A wireless service provider that is granted authority to collocate small wireless facilities on wireless support structures owned or controlled by the city and located within the public roads or rights-of-way is required to enter into a standard small wireless facility collocation agreement, but not an individual license, franchise, or other similar agreement with the local government unit or any other entity.

Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover the costs associated with a proposed attachment.

Section 6. Section 97.06 of the Apple Valley City Code is hereby amended to add §97.06(Y) and (Z) to read as follows:

**§97.06 CONDITIONS OF PERMIT AND REGISTRATION**

\* \* \* \*

(Y) Screening and Decorative Structures: The permittee shall screen all aboveground facilities and make reasonable accommodations for decorative wireless support structures or signs, as required by the director of public works. Screening methods shall include the use of shrubs, trees and/or with landscape rock or installation using stealth or camouflaged forms of the facility. The director may also impose reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.

(Z) Height restrictions of small wireless facilities: No wireless support structure installed in the public right-of-way after May 31, 2017, shall exceed 50 feet above ground level and a wireless facility installed in the public right-of-way after May 31, 2017, may not extend more than ten feet above an existing wireless support structure in place as of May 31, 2017.

Section 7. Section 97.11 of the Apple Valley City Code is hereby amended to read as follows:

**§ 97.11 PERMIT FEES.**

(A) All permit fees shall be submitted to the city with the application. Permit fees shall be set to recover the city management costs and, where applicable, restoration costs. The permit fees shall be established and as set forth in Chapter 35 by City Council resolution. No permit fee shall be refundable. No permit fees shall be required for any obstruction or excavation permit issued to the city, although the city shall be allocated its full portion of the city management costs in calculating the permit fees. Except where an extension permit has been granted, the permittee shall, as a delay penalty, be required to obtain a new permit and pay the associated fee for failure to complete the project work under the initial permit within the required time period. Applicants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time. There shall be a single permit and permit fee for joint excavation and obstruction permit applications. Applicants must agree among themselves as to the portion each will pay and indicate the same on the application.

(B) A fee for a conditional use permit as may be required herein for small wireless facilities shall be in addition to any obstruction or excavation permit fee and is governed by Chapter 155 of this Code.

Total application fees for a small wireless facility permit must comply with this Chapter with respect to costs related to the permit. For each small wireless facility attached to a wireless support structure owned by the City, the small wireless provider shall pay the following fees:

(1) \$150 per year for rent to occupy space on a wireless support structure;

(2) \$25 per year for maintenance associated with the space occupied on a wireless support structure; and

(3) A monthly fee for electricity used to operate a small wireless facility, if not purchased directly from the applicable electrical utility provider, at the rate of:

(i) \$73.00 per radio node less than or equal to 100 max watts;

(ii) \$182.00 per radio node over 100 max watts; or

(iii) The actual costs of electricity, if the actual costs exceed the amount in clauses (i) or (ii) above.

Permit Fee for Small Wireless Facilities: As required by state law, a person is not required to pay a small wireless facility permit fee, obtain a small wireless facility permit, or enter into a small wireless facility collocation agreement to solely conduct any of the following activities:

(1) Routine maintenance of a small wireless facility;

(2) Replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or

(3) Installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

Prior to the performance of any of the above excepted activities, the small wireless facility provider shall provide the City advance notification of these activities if the work will obstruct a public right-of-way.

Section 8. Summary approved. The City Council hereby determines that the text of the summary marked "Official Summary of Ordinance No. \_\_\_\_\_" a copy of which is attached hereto clearly informs the public of the intent and effect of the ordinance. The City Council further determines that publication of the title and such summary will clearly inform the public of the intent and effect of the ordinance.

Section 9. Filing. A copy of the ordinance shall be filed in the office of the City Clerk. This copy shall be available for inspection by any persons during regular office hours.

Section 10. Publication. The City Clerk shall publish the title of this ordinance and the official summary in the official newspaper of the City with notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the Office of the City Clerk.

Section 11. Effective date. This ordinance shall take effect upon its passage and the publication of its title and the official summary.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

---

Mary Hamann-Roland, Mayor

ATTEST:

---

Pamela J. Gackstetter, City Clerk

CITY OF APPLE VALLEY  
ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY OF APPLE VALLEY, MINNESOTA, AMENDING  
CHAPTER 97 OF THE CITY CODE REGULATING SMALL WIRELESS  
FACILITIES UNDER THE RIGHT-OF-WAY MANAGEMENT REGULATIONS

The following is the official summary of Ordinance No. \_\_\_\_ passed by the City Council of Apple Valley on \_\_\_\_\_, 2017:

Chapter 97 of the City Code, governing public right-of-way management regulations, is amended to incorporate small wireless facilities placement in public rights-of-way in accordance with the 2016 Minnesota State legislation. The amendments provide for placement of small wireless facilities within public right-of-ways, permit fees, and regulations.

A printed copy of the ordinance is available for inspection by any person during regular office hours in the office of the City Clerk at the Apple Valley Municipal Center, 7100 147th Street W., Apple Valley, Minnesota 55124.