

ORDINANCE NO. G-1152

AN ORDINANCE RELATING TO RIGHT OF WAY MANAGEMENT IN THE CITY OF JUNCTION CITY, KANSAS BY ADDING TO TITLE V, CHAPTER 595, ARTICLE IV, ENTITLED "RIGHT OF WAY MANAGEMENT," A NEW SECTION 595.631 "PLACEMENT OR MAINTENANCE OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY"

WHEREAS, to promote the public health, safety, aesthetics, and general welfare, the City of Junction City has a substantial and significant public interest in maintaining and protecting its public right-of-way in a non-discriminatory manner, and requiring that individuals and entities seeking permits to conduct any type of excavation, construction or other activity therein do so in a safe, expeditious, and professional manner; and

WHEREAS, the City Code provisions regulating public right-of-way management need to be updated to expressly address current practices utilizing wireless communications facilities in the public right-of-way and to protect the public interest by protecting, preserving and maintaining the health, safety and welfare of the users of the public right-of-way, while also protecting, preserving and maintaining the aesthetic character of areas where such rights-of-way exist, and this ordinance achieves such purpose;.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF JUNCTION CITY, KANSAS:

Section 1. A new Section 595.631 is hereby added to Chapter 595, Title V of the Code of Ordinances of the City of Junction City, Kansas to read as follows:

SECTION 595.631. PLACEMENT OR MAINTENANCE OF WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY.

- A. *Purpose.* The purpose of this section is to establish regulations for the siting and placement of wireless communication facilities within the public right-of-way in a manner consistent with state and federal law, while ensuring the public health, safety, and welfare, including minimizing the visual effects of wireless communication facilities on public streetscapes, protecting public views, and otherwise avoiding and mitigating the visual impacts of wireless communication facilities on nearby properties and the community at-large. The provisions of this section are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecommunication services, nor shall they be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecommunication services. The provisions of this section, in addition to the other provisions of Article IV, shall apply to wireless communication facilities in the public right-of-way.

B. *Definitions.* For purposes of this section, the following words and terms as used herein are defined as follows:

“Antenna” means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, antennas, arrays, or other similar devices.

“Wireless communication facility” means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including antennas, support equipment, and support structures. The term does not include mobile transmitting devices, such as vehicle or hand-held radios and telephones.

C. *Compliance with Law.* Wireless communication facility owners shall at all times comply with and abide by all applicable provisions of state, federal and local law and City ordinances, codes and regulations in placing or maintaining wireless communications facilities in the public right-of-way.

D. *Right to Prohibit.* To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of wireless communications facilities within a particular area of public right-of-way. The City shall have the power to prohibit or limit the placement of wireless communications facilities within the public right-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the public right-of-way, for the protection of existing facilities in the public right-of-way or to accommodate City plans for public improvements or projects that the City determines are in the public interest.

E. *Safety.* All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of wireless communications facilities.

F. *Requirements.* Wireless communications facilities located in the public right-of-way must meet the following requirements:

1. **Required approvals.** No application for placement of wireless communications facilities in the public right-of-way shall be permitted without approval of the City Engineer.

2. **Co-locations.** For the purposes of this section, “co-location” means the mounting or installation of an antenna on an existing power, light or other utility pole for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. In any co-location, the existing power, light or other utility pole may be modified or replaced to accommodate the new attachment, provided however that the modified or replacement pole complies with the height, setback and related location requirements. For the purposes of this section, an existing power, light or other utility pole modified or replaced to accommodate a new attachment shall continue to be considered an existing pole after replacement or modification. At all times, written

permission from the owner of an existing power, light or other utility pole shall be provided to the City Engineer at the time application is made for a permit to place a wireless communications facility within the public right-of-way.

3. **Application.** In addition to the requirements of Section 595.550, applications for a permit for wireless communications facilities in the public right-of-way shall include the following information:

- i. Plans and specifications for the proposed wireless communications facilities drawn to an accurate scale and showing all pertinent information. The application material shall provide sufficient information, as determined by the City Engineer, to allow a complete review of the proposal and to indicate compliance with all applicable requirements and performance standards provided in this section. At a minimum, the submittals shall show the location of any proposed poles, other equipment structures, and/or all interconnecting wires or conduits including fiber optic cables and the routes to be used therewith.
- ii. The fee required under Section 595.570 shall be submitted for each pole and/or location for the placement of a wireless communication facility within the public right-of-way. Said fee shall be submitted with the application and shall not be refundable. Failure to pay the fee shall be deemed to result in an incomplete application.

G. *Completeness review; time limitation.* The City shall grant or deny a properly completed application for a permit for wireless communications facilities in the public right-of-way within 30 days or, as required by federal and state law, after the date the application is determined to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the City. The City shall notify the applicant within ten business (10) days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the City's requirements. If the application is not completed in compliance with the City's requirements, the City shall so notify the applicant in writing indicating with specificity any deficiencies which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, no later than ten business (10) days after the additional information is submitted, of any remaining deficiencies that must be cured. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the City Engineer may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed. An occupant's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the City Commission.

H. *Performance Standards.* Unless otherwise specified, all wireless communication facilities in the public right-of-way shall comply with the following performance standards. The City Commission may grant a waiver from these standards when supported by sufficient justification and if the purpose and objectives of this section would be better served thereby.

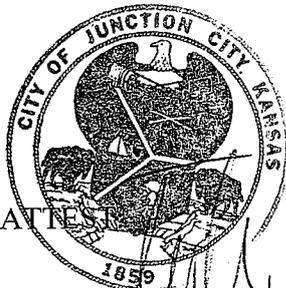
1. The height of a new pole in the public right-of-way to which an antenna is attached shall not exceed the height of existing poles or structures in the public right-of-way within one hundred feet of such proposed new pole, or if no such existing poles are present in the public right-of-way within one hundred (100) feet of such proposed new pole, the new pole shall not exceed a height of seventy (70) feet. Height shall be measured from the crown of the road of the nearest public street.
2. The height extension of wireless communications facilities co-located on existing support structures (power, light or other utility pole) shall not be no greater than twenty (20) feet above the original support structure height.
3. Antennas shall be treated with exterior coatings of a color and texture to match the support structure upon which they are attached.
4. Any new support structure shall be of new material, and the new support structure or any extension of an existing support structure shall match the original and/or surrounding utility or light poles in material, style, design, color, and finish.
5. Equipment attached to a support structure shall not exceed six (6) square feet in size or project more than eighteen (18) inches horizontally from the support structure.
6. All portions of the wireless communication facilities (other than the support structure and ground-mounted or underground support equipment) shall be located at least eight (8) feet above ground level and designed to provide adequate roadway clearance, to prevent interference or hazard to pedestrians, vehicular traffic, or other property in the public right-of-way.
7. Cable connecting an antenna to any support equipment shall be contained inside or shall be flush mounted to the support structure and covered with a metal, plastic, or similar material cap that matches the color of the support structure and is properly secured.
8. No signs or advertising shall be allowed on wireless communication facilities, except for small identification, address, warning, and similar information plates approved by the City Engineer.
9. Wireless communication facilities shall not be artificially illuminated unless required by applicable law to protect the public's health and safety.
10. All support equipment shall be placed or mounted in the least visually obtrusive location practicable, and shall be screened from view to the maximum extent

possible. Support equipment shall be painted or otherwise coated to be visually compatible with the support structure.

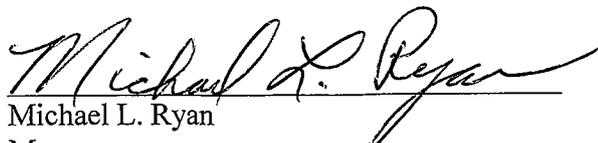
- I. *Other Regulations.* Nothing herein shall be construed to exempt an applicant from any other applicable ordinances, rules, regulations, or other requirements of the city, including but not limited to a franchise requirement, building codes, electrical codes, and the city's public right-of-way management ordinance.
- J. *Approval required from other governmental agencies and owners.* Each application for the location of a personal wireless service facility in the public right-of-way may be required to include written approval, or a statement of no objection, from governmental agencies that regulate siting, design, and construction of such facilities, or have jurisdiction over the public right-of-way, if any such agencies require the applicant to seek their review or approval. An existing facility in the public right-of-way shall only be utilized in a manner consistent with the City Code and with the written permission of the facility owner.
- K. *FCC emissions standards.* All personal wireless service facilities in the public rights-of-way shall comply with current radio frequency emissions standards of the Federal Communications Commission.
- L. *Administration and enforcement.* A permit may be revoked or suspended for violation of this section or a breach of any permit condition if a permittee fails to abate any violation within ten (10) days after written notice has been sent to the business address shown on the application for a permit, or such other address as may be subsequently provided to the city clerk in writing.
- M. *Penalties.* A violation of this section is punishable by a fine not exceeding \$1,000 per day per occurrence or imprisonment for a period not to exceed fifteen (15) days. Each day's continued violation shall constitute a separate offense.

Section 2. This ordinance shall become effective upon publication in the Junction City Daily Union as required by law.

PASSED AND ADOPTED THIS 19th DAY OF August, 2014.



Tyler Ficken
City Clerk


Michael L. Ryan
Mayor