

Legislation Text

File #: BILL NO. 18-211, **Version:** 1

An Ordinance amending Chapter 26, Streets, Sidewalks and Other Public Places, of the City Code of the City of Lee's Summit, Missouri, to provide consistent management of the Rights-of-Way with respect to small wireless facilities. (NOTE: First Reading by City Council on December 4, 2018.)

Issue/Request:

Consideration and adoption of An Ordinance Amending Chapter 26, Streets, Sidewalks and Other Public Places, of the City Code of the City of Lee's Summit, Missouri, to provide consistent management of the rights-of-way with respect to small wireless facilities.

Key Issues:

- The City owns rights-of-ways and is responsible for the management and care of this finite resource. Chapter 26 of the City Code pertains to the City right-of-way management.
- The State's Uniform Small Wireless Facility Deployment Act, which takes effect January 1, 2019, and Order 18-133, issued by the Federal Communications Commission and effective January 11, 2019, preempts much of the City's authority to regulate the rights-of-way and use of City infrastructure in the rights-of-way with regard to small wireless facilities.
- The proposed Ordinance amends Chapter 26 of the City Code to bring the City into compliance the changes to state and federal law, while preserving its authority under the law to regulate the rights-of-way with regard to small wireless facilities and receive compensation for use of City property by wireless providers by creating standard terms and conditions for the deployment of small wireless facilities.

Proposed City Council Motions:

SECOND MOTION:

I move for adoption of an Ordinance Amending Chapter 26, Streets, Sidewalks and Other Public Places, of the City Code of the City of Lee's Summit, Missouri, to provide consistent management of the rights-of-way with respect to small wireless facilities.

Background:

From the beginning of statehood, cities have "owned" the rights-of-way (ROW) and had the non-delegable duty to maintain them in a safe condition for their intended use. As the entity entrusted as the "owner" of the right-of-way, the City is responsible to for the management of use of the ROW by others and the public improvements located within the right-of-way. It falls to the City, within its resources and as allowed or required by law, to balance the needs and uses of

the entire community including adjacent landowners when acting.

Utility users of the right-of-way are required to obtain consent from the City to install facilities and equipment within the rights-of-way. In the past, cities were able to require utilities to get a franchise or license before operating, but over the past several years, state law has removed or curtailed some of the cities' authority by controlling the terms cities could impose for use of the ROW, such as the ability to recover any fees. The ability to obtain franchises and charge for the use of the ROW has already been curtailed in many regards.

Earlier this year, the Missouri General Assembly adopted the Uniform Small Wireless Facility Deployment Act (USWFDA) pursuant to House Bill 1991. The USWFDA severely limits municipalities' ability to regulate small wireless facilities ("SWF"). For example, the USWFDA exempts small wireless facility from all local zoning regulations and standards unless the small wireless facility is located in an area zoned as single family residential or historic. The USWFDA also requires municipalities to allow small wireless facilities to be installed on any city property in the right-of-way, including streetlights, traffic signal poles, and street signs, for less than fair market value. Wireless providers must apply to municipalities for permits to use municipality property or enter the right-of-way, but the USWFDA significantly limits municipalities' ability to deny the requested permit. Moreover, if a municipality does not approve or deny an application for a small wireless facility installation within 45 days for collocations or 60 days for new/replacement utility poles from the receipt of the application, the application is deemed approved regardless of whether it complies with the law.

In late September, the Federal Communications Commission issued Order 18-133 addressing many of the same issues regarding small wireless facilities included in the USWFDA. The Order, however, does not overrule state legislation that imposes more restrictions on municipalities. The USWFDA and the Order are very similar, and take effect January 1, 2019 and January 11, 2019 respectively.

The USWFDA requires the City to adopt an ordinance or develop an agreement that sets the City's rates, fees, and other terms and conditions that comply with the USWFDA, but the USWFDA prohibits cities from requiring wireless providers to enter such agreements before entering the right-of-way or using City property. To ensure the City maintains maximum control of its property and the right-of-way allowable under the USWFDA and Order, staff recommends that the City enact terms and conditions for use of City property and/or the right-of-way via an ordinance.

The proposed Ordinance set of standard terms and conditions for the placement of small wireless facilities in the right-of-way. It allows right-of-way users to apply for site approvals for the deployment of small wireless facilities) subject to certain terms and conditions as set forth in the Code of Ordinances. This proposed Ordinance and associated terms and conditions will permit the City to exercise the greatest amount of authority to carry out its responsibilities with respect to the right-of-way while still complying with the USWFDA and Order.

Michael Park, PE, PTOE, City Traffic Engineer
Dan White, Chief Counsel of Management and Operations

Recommendation: Staff recommends adoption of An Ordinance Amending Chapter 26, Streets, Sidewalks and Other Public Places, of the City Code of the City of Lee's Summit, Missouri, to provide consistent management of the rights-of-way with respect to small wireless facilities, and the Terms and Conditions for Small Wireless Facilities referenced therein, as proposed in Council's packet.

