

ZONING CODE TEXT AMENDMENT SUMMARY

<i>Initiator:</i>	Council Member Reich
<i>Introduction Date:</i>	March 20, 2015
<i>Prepared By:</i>	<u>Joseph R. Giant</u> , City Planner, (612) 673-3489
<i>Specific Site:</i>	Citywide
<i>Ward:</i>	Citywide
<i>Neighborhood:</i>	Citywide
<i>Intent:</i>	Amending regulations for telecommunications towers, antennas, and base units

APPLICABLE SECTIONS OF THE ZONING CODE

- Chapter 535, Regulations of General Applicability

The following chapters were also introduced:

- Chapter 520, Introductory Provisions
- Chapter 525, Administration and Enforcement
- Chapter 531, Nonconforming Uses and Structures
- Chapter 551, Overlay Districts

However, staff is not recommending changes to these chapters as part of this amendment and is therefore recommending returning them to the author.

BACKGROUND

The City's zoning regulations for communications towers, antennas, and base units are contained in Chapter 535, Article VIII of the Minneapolis Code of Ordinances. The current regulations were drafted at a time when antennas were bulky and bolted to the tops of guyed or lattice towers. While that kind of "macrocell" deployment still exists and will continue to exist, there are now a variety of complementary and alternative technologies that are much smaller. Distributed antenna system, or "DAS", networks and other "small cell" systems use components that are a fraction of the size of macrocell deployments, and can be installed on utility poles, buildings, and other smaller structures. Several photos of DAS and small cell antennas are contained in the Attachments. Currently, DAS and small cell networks do not exist on infrastructure in the public right-of-way in Minneapolis. The most similar local example would be the antennas installed by USI Wireless on utility poles. In response to these technological advances, the City has received a number of requests to attach telecommunications antennas to City-owned infrastructure, allowing carriers to manage signal demand in areas with high volume usage such as downtown Minneapolis.

On April 7, 2015, the City Council approved an ordinance creating a streamlined review and approval process for telecommunications antennas on City-owned 30-foot light poles and traffic signal davits (the post-and-arm structure to which traffic lights are attached) in the public right-of-way.¹ According to the adopted ordinance, eligible requests would be approved by the Director of Public Works through an attachment permit. The adopted amendment would not allow antennas on any other structures in the right-of-way.

According to the current zoning code, telecommunications antennas attached to existing light poles and similar structures require a conditional use permit (CUP). DAS and small cell networks require a large number of small antennas to achieve network benefits, which would consequently require the processing of a large number of CUPs. Processing a CUP for each attachment on each pole would be burdensome for all parties and the level of scrutiny would not be commensurate with the impact of the use. Therefore, the goal of this text amendment is two part. First, to eliminate the CUP requirement for DAS and small cell networks installed on existing City-owned light poles and traffic signal davits in the public right-of-way that meet the provisions in the recently adopted ordinance. Second, to uphold and modify the development standards for telecommunications installations contained in Chapter 535.540. Antennas mounted to light poles and similar structures that do not meet these provisions would continue to require a CUP.

PURPOSE

What is the reason for the amendment?

The reasons for the proposed amendment are to remove barriers to fair, reasonable, and non-discriminatory access to available capacity on City-owned infrastructure located within the public right-of-way, to ensure that communication antennas and associated equipment are placed appropriately and are compatible with surrounding uses, and to do so in an equitable manner consistent with applicable federal, state, and local laws.

Chapter 451 of the Minneapolis Code of Ordinances authorizes a streamlined review process and creates development standards and procedural requirements for antennas attached to City-owned 30-foot light poles and traffic signal davits in the public right-of-way. Chapter 451 was passed in anticipation of this proposed amendment which makes eligible deployments a permitted use, rather than a conditional use, thereby significantly reducing the costs, entitlement risks, and review period.

¹ Minneapolis Code of Ordinances Title 17, Chapter 451, Use of City-Owned Infrastructure.
<http://www.ci.minneapolis.mn.us/www/groups/public/@clerk/documents/webcontent/wcms1p-139013.pdf>

What problem is the amendment designed to solve?

The first problem that the amendment is designed to solve is the application of outdated rules to new technologies. The existing zoning regulations for communications towers, antennas, and base units were written to address traditional macrocell antennas on cell towers and tall existing structures. The ordinance did not contemplate technological advancements such as DAS and small cell antennas that could be placed on existing smaller infrastructure. As a result, the application of current rules to new technologies is problematic. For example, the current regulations explicitly prevent telecommunications equipment from crossing the right-of-way.²

Another related problem the amendment aims to solve is the issue of application volume. By design, DAS and small cell antenna systems employ smaller antennas spread out on many different structures. The current entitlement process implicitly discourages these deployments by requiring a CUP for every individual pole or signal davit to which an antenna is attached (unlike typical roof or facade mounted antennas which are almost always approved administratively).

Another issue related to application volume is timely review. Federal law limits the review period for telecommunications applications to 150 days, with an even shorter time frame of 60 days for collocations.³ Meeting the federally imposed time frames will be made less burdensome by allowing administrative review for applications that fall within the provisions of the ordinance. Reviewing attachment permits administratively significantly shortens the review period and eliminates the uncertainties associated with a CUP.

Finally, the amendment is designed to solve problems associated with areas of high wireless communications usage. Minneapolis currently receives cellular coverage almost exclusively through macrocell antennas. Traditional macrocell antennas are most often located on the roofs or facades of buildings or mounted to telecommunications towers. A typical installation consists of 12 antennas spread over 3 sectors, with antennas ranging between 4 and 8 feet in height. Cellular service providers utilize specific bandwidth ranges, so antennas cannot be shared. As a result, most areas require 4 sets (Verizon, AT&T, Sprint, and T-Mobile) of up to 12 cumbersome antennas.

DAS and small cell systems will work in conjunction with traditional macrocell deployments to provide increased coverage in areas with very high cell phone usage. Allowing telecommunications antennas on 30-foot light poles and traffic signal davits could substantially improve service levels in high-density areas, such as downtown Minneapolis, while reducing the need for additional macrocell antennas.

The amendment will not prevent the city from maintaining oversight over all commercial telecommunications development. All antennas used by the public must continue to comply with the development standards contained in Chapter 535.540.

² Minneapolis Code of Ordinances Title 20, Chapter 535.540(1)(c).

³ FCC 2009 Declaratory Ruling, para. 45-46, FCC 09-99, 24 FCC Rcd. 13994 (2009), Interpreting what constituted “a reasonable period of time” to act in 47 U.S.C. §332(c)7.

What public purpose will be served by the amendment?

The amendment seeks to balance the public need for access to reliable telecommunications infrastructure against the potential adverse effects such infrastructure can have when deployed without oversight. The zoning ordinance regulates the location and placement of telecommunications antennas and associated equipment because the deployments, although necessary and important, must not detract from an aesthetically pleasing environment.

The proposed amendment also reduces procedural barriers to the deployment of telecommunications infrastructure, which allows the network to keep up with increasing demand. With the widespread adoption of 4G cell service, data usage has increased dramatically over the past few years. According to the Pew Research Center, in 2015, 64% of Americans own a smartphone, up from 35% in 2011. Further, an increasing number of people are relying on their smartphone as a primary means of Internet access. Reliable access to wireless internet has become especially important to persons with relatively low income and educational attainment, younger adults, and non-whites.⁴ Dependable access to mobile telecommunications will enhance the goals of general public safety and access to emergency services, especially to vulnerable populations.

The ability to meet this growing demand depends on the infrastructure that supports the services. It is unlikely that areas of very high cell usage could accommodate the increasing data demands solely with macrocell deployments. Reducing the regulatory hurdles to install DAS and small cell systems will facilitate wireless communication and respond to growing data demands.

What problems might the amendment create?

The amendment is not expected to create any problems. All new deployments will be reviewed by the Director of Public Works and will be subject to development standards intended to address their visual impact. New light poles built specifically to accommodate deployments would continue to require a CUP. Deployments on utility poles and signs, and deployments on any other structures in the public right-of-way that do not meet the requirements of Chapter 451 would also require a CUP.

The Planning Commission Committee of the Whole expressed concerns about concealment, unnecessary appurtenances (such as loose wires), concentration of antennas, and obsolete and unused infrastructure. To address concealment and unnecessary appurtenances, specific language has been added to the Chapter 535.540 development standards for antennas mounted to city-owned light poles. In regards to obsolete equipment and infrastructure, regulations currently exist in Chapter 535 addressing unused towers.⁵ Additionally, there is language in the adopted ordinance specifying removal of obsolete equipment after 60 days.⁶

⁴ Smith, Aaron. "U.S. Smartphone Use in 2015." Pew Research Center. April 1, 2015. (<http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015>)

⁵ Minneapolis Code of Ordinances Title 20, Chapter 535.550

TIMELINESS

Is the amendment timely?

The City has already received requests to install antennas in the right-of-way. In response to growing interest in the new technology, the City Council passed an amendment in April authorizing the use of select infrastructure in the public right-of-way for telecommunications deployments.

The subject text amendment complements the recently passed ordinance to reduce regulatory hurdles for those deployments.

Is the amendment consistent with practices in surrounding areas?

Similar to Minneapolis, many municipal zoning ordinances were adopted before the contemplation of antennas in the right-of-way. Thus, many municipalities are in the process of updating their ordinances to respond to technological advances and FCC mandates. Ordinances and policies for municipalities that have addressed right of way installations often pertain to matters of process, indemnification, and compensation rather than zoning concerns. This is consistent with the ordinance that was passed by the Minneapolis City Council last month. Some ordinances do not specifically distinguish deployments in the right-of-way, but mention installations on utility poles.

Because these antennas are used in very high-density settings, there are not many locations in the Twin Cities metro area where right-of-way installations would be appropriate. Downtown St. Paul would be the most relevant area for comparison. St. Paul recently completed a Cellular Telephone Antenna Zoning Study and subsequent text amendment in response to recent FCC orders.⁷ Neither the St. Paul zoning code⁸ nor the Study references antennas in the right-of-way specifically. The St. Paul zoning code currently requires a conditional use permit for telecommunications antennas on existing utility poles less than 60 feet in height.

Chicago has allowed antennas on utility structures and light poles for a decade. Antenna applications are reviewed by the Chicago Department of Transportation and the Office of Emergency Management and Communications, and are permitted by right provided certain requirements are met.⁹ Installations on eligible light poles must be at least 10 feet above grade, must not exceed 9 feet of cubic volume, must be

⁶ Minneapolis Code of Ordinances Title 17, Chapter 451.60(c)(2)

<http://www.ci.minneapolis.mn.us/www/groups/public/@clerk/documents/webcontent/wcms1p-139013.pdf>

⁷ Comprehensive Planning Committee. City of St. Paul, Minnesota. Cellular Telephone Antenna Zoning Study. March 25, 2015.

<https://stpaul.legistar.com/LegislationDetail.aspx?ID=2255839&GUID=5D60D976-4C5C-40B4-BBDB-6FFA716EC605&Options=&Search=>

⁸ St. Paul, MN – Code of Ordinances Title VIII – Zoning Code, Chapters 60-69.

https://www.municode.com/library/#!/mn/st_paul/codes/code_of_ordinances?nodeld=PTIILECO_TITVIII_ZOCO.

⁹ Gerber, Jim. "The City of Big Broadband Shoulders." OSP Magazine. <http://www.ospmag.com/issue/article/The-City-of-Big-Broadband-Shoulders>

painted to match the color of the pole, and must not include ground-mounted equipment.¹⁰ Chicago does not specifically mention right-of-way installations in their zoning code.¹¹

Chicago's ordinance was passed prior to the adoption of the most recent FCC order. This order limits the degree to which local governments can control the physical dimensions and location of deployments. It is likely that Chicago's rules, although robust, will need to be revised to comply with the federal mandate.

Are there consequences in denying this amendment?

Denying the amendment would contradict the intent of recently adopted Chapter 451 of the Minneapolis Code of Ordinances, which created an alternate means of approval for telecommunications antennas mounted to City-owned infrastructures.

COMPREHENSIVE PLAN

The amendment will implement the following applicable policies of *The Minneapolis Plan for Sustainable Growth*:

Economic Development Policy 4.3: Develop and maintain the city's technological and information infrastructure to ensure the long-term success and competitiveness of Minneapolis in regional, national and global markets.

- 4.3.1 Promote the use of best available technology in upgrading communication linkages to the region and the world.
- 4.3.3 Develop technological and information infrastructure in order to offer high quality working environments for businesses.

Economic Development Policy 4.1: Support private sector growth to maintain a healthy, diverse economy.

- 4.1.5 Continue to streamline City development review, permitting and licensing to make it easier to develop property in the City of Minneapolis.

Economic Development Policy 4.13: Downtown will continue to be the most sustainable place to do business in the metro area.

¹⁰ City of Chicago. Regulations for use of City Light Poles. 5.1.1-5.1.4

¹¹ Chicago Zoning Ordinance - (17-9-0118) - <http://chicagocode.org/10-29-060/>

- 4.13.8 Continue to improve Downtown infrastructure to meet the needs of businesses, residents and visitors.

Land Use Policy 1.15: Support development of Growth Centers as locations for concentration of jobs and housing, and supporting services.

- 1.15.1 Support development of Growth Centers through planning efforts to guide decisions and prioritize investments in these areas.
- 1.15.2 Support the intensification of jobs in Growth Centers through employment generating development.

Wireless communication is an integral part of everyday life, so it is important for the City to facilitate the implementation of infrastructure that responds to growing technological demands. However, the pursuit of this goal must not occur at the expense of the public realm. This amendment advances the City's technological and communication-based goals, as consistent with the above policies of the comprehensive plan, while ensuring that deployments will meet development standards intended to mitigate their visual impact.

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the City Planning Commission and City Council adopt staff findings for the zoning code text amendment addressing telecommunications towers, antennas, and base units:

A. Zoning Code Text Amendment

Recommended motion: **Approve** the text amendment, amending Chapter 535, Regulations of General Applicability. Staff further recommends that Chapters 520, 525, and 551 be **returned** to the author.

ATTACHMENTS

1. Ordinance amending Chapter 535, Article VIII.
2. Photos of DAS and small cell antennas
3. Minneapolis Code of Ordinances Chapter 451, adopted 4/17/2015

**AN ORDINANCE
OF THE
CITY OF
MINNEAPOLIS**

By Reich

**Amending Title 20, Chapter 535 of the Minneapolis Code of Ordinances relating to
Zoning Code: Regulations of General Applicability.**

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 535.480 of the above-entitled ordinance be amended to read as follows:

535.480. - Definitions. As used in this article, the following words shall mean:

Base unit. An unstaffed single story structure or weatherproofed cabinet used to house radio frequency transmitters, receivers, power amplifiers, signal processing hardware and related equipment.

Communication antenna. A device intended for receiving or transmitting television, radio, digital, microwave, cellular, personal communication service (PCS), paging or similar forms of wireless electronic communication, including but not limited to directional antennas such as panels, microwave dishes and satellite dishes, and omni-directional antennas, such as whip antennas.

Communication antenna, façade mounted. A communication antenna mounted on the façade of a structure such as a building, water tower, clock tower, steeple, stack, ~~or existing light pole, traffic signal davit~~ or communication tower.

~~*Public safety communication system.* A communication system owned or operated by a governmental entity such as a law enforcement agency, public works department, municipal transit authority or medical facility.~~

Communication tower or antenna, rooftop mounted. A communication tower or antenna located on the roof of a structure such as a building, water tower, clock tower, penthouse or similar structure.

Communication tower. Any pole, spire, structure or combination thereof, including supporting lines, cables, wires, braces and mast, designed and constructed primarily for the purpose of supporting one (1) or more antennas, including self supporting lattice towers, guyed towers or monopole towers. A communication tower may include, but not be limited to, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers and personal communication service towers.

Communication tower, monopole. A communication tower consisting of a single pole, constructed without guyed wires and anchors.

Communication tower and antenna height. The height of a freestanding communication tower and antenna shall be measured as the distance from ground level to the highest point on the tower, including the antenna. The height of a rooftop communication antenna shall be measured as the distance from the point where the base of the tower and antenna is attached to the roof, to the highest point on the supporting structure, including the antenna.

Institutional use. Educational facilities, parks, cemeteries, golf courses, sport arenas, religious institutions, athletic fields and publicly owned property.

Publicly owned property. Land, buildings or structures owned by any governmental body or public agency including city, county, state or federally owned properties, other than public rights-of-way.

Public safety communication system. A communication system owned or operated by a governmental entity such as a law enforcement agency, public works department, municipal transit authority or medical facility.

Transmission equipment. Any equipment that facilitates transmission for wireless communication, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.

Section 2. That Section 535.490 of the above-entitled ordinance be amended to read as follows:

535.490. - Permitted uses exempt from administrative review and approval.

Notwithstanding any other provisions to the contrary, communication towers and antennas designed for private reception of television and radio signals, used for amateur or recreational purposes, and façade mounted communication antennas attached to existing city-owned light poles and traffic signal davits in public rights of way, shall be permitted in all districts, provided such antennas and towers comply with the standards of section 535.540, Chapter 451 of the Minneapolis Code of Ordinances, and the following:

- (1) Notwithstanding the height limitations of the zoning district, freestanding towers and antennas shall not exceed thirty-five (35) feet in height and rooftop mounted antennas shall not exceed fifteen (15) feet in height.
- (2) Antennas shall not exceed one (1) meter in diameter in the residence and office residence districts and two (2) meters in diameter in all other districts.
- (3) Towers and antennas shall not be located in any required front, side or rear yard, nor shall they be located between a principal building and a required front or side yard.
- (4) Only one (1) freestanding tower and antenna shall be allowed per residential zoning lot.

Section 3. That Section 535.520 of the above-entitled ordinance be amended to read as follows:

535.520. - Conditional uses. (a) *In general.* The following communication towers, antennas and base units may be allowed as a conditional use, subject to the provisions of Chapter 525, Administration and Enforcement, and sections 535.530 and 535.540

- (1) Freestanding communication towers and antennas, including antennas mounted on light poles and similar structures ~~that are not façade mounted~~, provided that towers and antennas located in the residence and office residence districts shall be located on institutional use sites of not less than twenty thousand (20,000) square feet. Freestanding communication towers and antennas shall be prohibited in the downtown area bounded by the Mississippi River, I-35W, I-94, and I-394/Third Avenue North (extended to the river) except that antennas may be mounted to light poles existing on the effective date of this ordinance.
- (2) Rooftop mounted communication towers and antennas exceeding fifteen (15) feet in height.
- (3) Communication towers and antennas designed for private reception of television and radio signals and used for amateur or recreational purposes which exceed thirty-five (35) feet in height if freestanding or fifteen (15) feet in height if rooftop mounted, or antennas which exceed one (1) meter in diameter in the residence and office residence districts or two (2) meters in diameter in all other districts.
- (4) Communication towers and antennas that use any portion of a structure, other than the roof or penthouse, for structural support and do not meet the definition of a façade mounted communication antenna.

(b) *Exceptions.* The uses listed below shall be exempt from the provisions of this section as follows:

- (1) *Communication antennas and transmission equipment mounted to city owned light poles or traffic signal davits in public rights-of-way for which a valid attachment permit has been granted pursuant to Chapter 451 of the Minneapolis Code of Ordinances.*

Section 4. That Section 535.540 of the above-entitled ordinance be amended to read as follows:

535.540. - Development standards for all permitted and conditional communication towers, antennas and base units. In addition to the standards of sections 535.490, 535.500 and 535.530 above, all communication towers, antennas and base units shall be subject to the following standards:

- (1) *Encroachments and setbacks.*
 - a. The tower site and setback shall be of adequate size to contain guyed wires, debris and the tower in the event of a collapse.
 - b. Communication towers shall maintain a minimum distance from the nearest residential structure equal to twice the height of the tower. For the

purposes of this article, residential structures shall also include any parking structure attached to a principal residential structure.

- c. No part of any communication tower, antenna, base unit, equipment, guyed wires or braces shall extend across or over any part of a public right-of-way, except communication antennas and transmission equipment mounted to city-owned light poles or traffic signal davits in public rights of way for which a valid attachment permit has been granted pursuant to Chapter 451 of the Minneapolis Code of Ordinances.
 - d. Communication towers, antennas and base units shall comply with applicable regulations as established by the Federal Aviation Administration.
 - e. Communication towers, antennas and base units shall comply with the minimum yard requirements of the district in which they are located.
- (2) *Compatibility with nearby properties.* Communication towers, antennas and base units shall utilize building materials, colors and textures that are compatible with the existing principal structure and that effectively blend the tower facilities into the surrounding setting and environment to the greatest extent possible. Metal towers shall be constructed of, or treated with, corrosive resistant material. Outside of the industrial districts, unpainted, galvanized metal, or similar towers shall be prohibited, unless a self-weathering tower is determined to be more compatible with the surrounding area.
- (3) *Screening and landscaping.* A screening and landscaping plan designed to screen the base of the tower and the base unit shall be submitted. The plan shall show location, size, quantity and type of landscape materials. Landscape materials shall be capable of screening the site all year. One (1) row of evergreen shrubs or trees capable of forming a continuous hedge at least six (6) feet in height within two (2) years of planting shall be provided to effectively screen the base of the tower and the base unit, except for towers and antennas designed for private reception of television and radio signals and used for amateur or recreational purposes, and light poles and traffic signal davits in public rights-of-way that support communication antennas and transmission equipment. A maintenance plan for the landscape materials shall also be submitted. The city planning commission may consider the substitution of other architectural screening plans such as a decorative fence or masonry wall in lieu of planted materials.
- (4) *Rooftop mounted towers and antennas.* Rooftop mounted communication towers and antennas shall not be located on residential structures less than fifty (50) feet in height, except for towers and antennas designed for private reception of television and radio signals and used for amateur or recreational purposes.
- (5) *Façade mounted antennas.*
- a. *Mounted on freestanding towers and poles.* A façade mounted antenna shall not extend above the façade of the tower or pole on which it is mounted, but otherwise may project outward beyond such façade.

b. Mounted on city-owned light poles or traffic signal davits in public rights of way. A façade mounted antenna on an existing city-owned light pole or traffic signal davit shall comply with the standards of Chapter 451 of the Minneapolis Code of Ordinances. Such antennas and transmission equipment shall be painted to match the structure to which they are mounted and shall be designed to minimize the visibility of cables and other appurtenances.

~~b.c.~~ *Mounted on all other structures.* A façade mounted antenna shall be mounted flush against the structure on which it is mounted and shall not extend beyond the façade of such structure, except that antennas designed for private reception of television and radio signals, used for amateur or recreational purposes, may extend above the façade of the structure.

- (6) *Base units.* Base units shall not exceed five hundred (500) square feet of gross floor area. The city may require as a condition of approval that base units be located underground.
- (7) *Security.* All sites shall be reasonably protected against unauthorized climbing. The bottom of the tower, measured from ground level to twelve (12) feet above ground level, shall be designed in a manner to discourage unauthorized climbing.
- (8) *Signage.* Advertising or identification of any kind on towers, antennas and base units shall be prohibited, except for applicable warning and equipment information signage required by the manufacturer or by federal, state or local regulations.
- (9) *Lighting.* Communication towers and antennas shall not be illuminated by artificial means, except when mounted on an existing light pole or where the illumination is specifically required by the Federal Aviation Administration or other federal, state or local regulations.
- (10) *Heritage Preservation Ordinance compliance.* Communication towers and antennas proposed for any locally designated historic structures or locally designated historic districts shall be subject to all requirements of the city's Heritage Preservation Ordinance.
- (11) *Radio frequency emissions and noninterference.* The applicant shall comply with all applicable Federal Communication Commission standards.
- (12) *Public safety communication system.* The location of the proposed antenna, if located on publicly owned property, shall not be needed for use by the public safety communication system, or if needed, it shall be determined by the director of the property services division of the finance department that co-location of the proposed antenna with a public safety antenna is agreeable.



Currently at corner of 9th St S and Lasalle Ave in downtown Minneapolis





DAS and small cell antennas in other settings

AN ORDINANCE
of the
CITY OF
MINNEAPOLIS

Council Member Reich presents the following ordinance:

Amending Title 17, of the Minneapolis Code of Ordinances relating to Streets and Sidewalks: Use of City Owned Infrastructure.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Title 17 of the above entitled ordinance be amended by adding a new Chapter 451 to read as follows:

CHAPTER 451. USE OF CITY OWNED INFRASTRUCTURE.

451.10 DEFINITIONS.

(A) Except as provided in Subsection (B), in this chapter:

(1) “*applicant*” means a person who applies to use City infrastructure.

(2) “*attachment*” includes:

(a) on a pole, each aerial cable, together with its associated messenger cable, guy wire, anchors and other appurtenant and incidental facilities;

(b) in a conduit, each linear foot of occupancy of a City-owned conduit or duct by each cable or other attachment; and

(c) each antenna, transceiver, amplifier, repeater or other device or equipment of a user supported by, affixed to, contained in, or placed on or in a unit of City owned infrastructure.

(3) “*attachment permit*” means the permit for a user to place, install, construct, replace, move, remove, keep, maintain, operate, or use an attachment on or in City owned infrastructure under this chapter or a permit issued under this chapter.

(4) “*cable*” means a wire rope or a bound or sheathed assembly of conductors, wires, or fibers, including fiber optic cable, coaxial cable, and twisted pair copper cable. Each cable that is lashed to another cable or to a common messenger cable is a separate attachment.

(5) “*communications services provider*” means a user who provides or offers to provide cable, telecommunications, or video services pursuant to a franchise or a federal or state certificate or other authority and who has a right to use the City’s public right-of-way for the provision of those services under federal, state, or local law.

(6) “*Director*” means the Director of the Minneapolis Public Works Department or, unless the context indicates otherwise, the Director’s designees.

(7) “*Director of Public Works*” means the specific individual, who has been appointed Director of the Minneapolis Public Works Department, or in the case of such person’s absence from duties, the duly determined Acting Director of Public Works.

(8) “*user*” means a person who has been granted the right to install an attachment under this chapter.

(9) “*City*” means the City of Minneapolis.

(10) “*city owned infrastructure*” includes city owned facilities as defined specifically in the Minneapolis Pole Attachment Policy that are located in the public right of way. It does not mean poles or other structures owned by a city contractor. It does not mean State, County or other municipally or government entity owned infrastructure on City owned right of way. It does not mean infrastructure owned by a public utility. It does not mean infrastructure located outside of the public right of way.

(11) “*person*” has the meaning given in Section 3.60 of this code.

(B) If state law governing attachments to city-owned utility infrastructure provides a definition of “attachment” in conflict with and preemptive of the definition in this section, the state definition controls.

451.20 PURPOSE.

This chapter establishes a uniform policy for use of City owned infrastructure to enable the City to:

(1) permit fair, reasonable, and non-discriminatory access to the available capacity on City owned infrastructure located within the public right-of-way;

(2) safeguard the reliability and integrity of City owned infrastructure located in the public right of way;

(3) obtain fair compensation for the use of City owned infrastructure through fees and usage and other charges;

(4) comply with applicable and constitutional federal, state, and local regulation as applied to City owned infrastructure placed within the right of way;

(5) support cost-effective, optimal use of public resources and support economic development;

(6) manage the public right-of-way to protect the public health, safety, and welfare by minimizing the congestion, inconvenience, cost, visual impacts, deterioration, safety hazards and other adverse effects on the public right-of-way which could result from the construction, operation, and maintenance of additional structures constructed by service providers.

451.30 RESTRICTIONS ON USE OF CITY OWNED INFRASTRUCTURE.

(A) *The right to use City owned infrastructure not granted by franchise.* The eligibility of a person to apply for or use City owned infrastructure is governed by this chapter. The grant of a franchise pursuant to the City Charter, the grant of permits pursuant to Chapter 429 and 430 of this Code or the grant of rights under other authority provided by this Code is not a grant of an

attachment permit or authorization for the use of City owned infrastructure without compliance with this chapter.

(B) *Authority of the Director as to City owned infrastructure.* The Director shall operate, maintain, and control City owned infrastructure, and administer this chapter. The Director shall develop non-discriminatory policies and regulations to implement, administer, and enforce this chapter. The Director may delegate the operation, maintenance, or control of specific types or units of City owned infrastructure to another City department or unit if the Director determines it is in the best interests of the City.

(C) *Priority of usage.* The City has priority of use of City owned infrastructure.

(D) *Reservation and restrictions.*

(1) The City retains the exclusive use of:

- (a) Any pole, truss, arm or other structure that supports traffic signal equipment,
- (b) Any street light pole less than 25 feet high,
- (c) Variable message signs,
- (d) City owned conduit ,
- (e) City owned infrastructure not on, in or over the public right of way, and
- (f) Any City owned structure on right of way not listed specifically in the Minneapolis Pole Attachment Policy.

The Director may permit third party use of reserved City owned infrastructure only in exceptional cases, upon terms and conditions determined by the Director.

(2) The Director may determine that, in addition to the infrastructure listed in paragraph 1 above, certain classes of City owned infrastructure or specific units of City owned infrastructure are necessary for City's exclusive use due to legal, mechanical, structural, safety, environmental, service, or other requirements, and are unavailable for use by another person.

(3) City owned infrastructure is the property of the City and a payment made by a user does not create a right, title, or interest in City owned infrastructure for the use.

(4) This chapter does not require the City to replace, upgrade, or alter existing City owned infrastructure to create additional capacity for an attachment. The City retains complete discretion as to use of City owned infrastructure as to both current and subsequent requests to use any particular item of City owned infrastructure, including requests for co-location or modification. Decisions regarding the use of City owned infrastructure, pursuant to this Chapter, are discretionary proprietary decisions as to proper use of City owned infrastructure placed within the right of way and are not regulatory decisions.

(E) *Unauthorized use prohibited.* An applicant, user, or other party does not have the right to place an attachment on City owned infrastructure except as authorized by the Director. If an unauthorized attachment is discovered, the Director may remove the unauthorized attachment from City owned infrastructure without incurring liability to the owner, and at the owner's sole expense, if the owner of the unauthorized attachment does not:

- (1) remove the unauthorized attachment within 3 business days; or
- (2) apply for permission to have the attachment on City owned infrastructure within 3 business days, including payment of applicable charges or penalties.

An attachment can be removed immediately if necessary to protect public safety or prevent imminent damage to City owned infrastructure.

451.40 FEES AND CHARGES.

(A) Except as otherwise provided by this section, the City Council shall establish fees and charges under this chapter by separate ordinance or by separate resolution.

(B) A charge established under this chapter may not exceed the maximum amount permitted by applicable law.

(C) Filing fees and usage charges shall be calculated and applied in a consistent manner for all similarly situated users. If state law or regulation preempts a filing fee or usage charge under this chapter, the filing fee and usage charge collected by the City shall be the maximum amount permitted by state law or regulation.

451.50 APPLICATION TO USE CITY OWNED INFRASTRUCTURE.

(A) *Authorized user.* Unless otherwise required by law, only a person who holds a valid permit, franchise or license to use or cross a City street, highway, or right-of-way will be granted an attachment permit for on City owned infrastructure. An applicant's use of City owned infrastructure is limited to the purposes specified in the applicant's franchise, permit or license. An attachment used for a purpose not authorized by an applicant's permit, franchise or license is an unauthorized attachment. A person who applies to use City owned infrastructure for a private purpose will not be granted an attachment permit.

(B) *Application process.* An applicant must file an application with the City to use City owned infrastructure as prescribed by the Director. Subject to the availability of City owned infrastructure capacity, the Director shall consider each application on a first come, first served basis. If an application cannot be approved as presented, the Director may approve a conditional application.

(C) *Denial of an application.*

(1) The Director may deny an application for an attachment if:

(a) the applicant fails to submit a complete application;

(b) the applicant fails to supplement its application with additional information or otherwise cooperate with the City as requested in the evaluation of the application;

(c) the applicant fails to pay the filing fee;

(d) the applicant fails to submit a structural engineering analysis by a Minnesota registered professional engineer certifying that the pole or other structure that is proposed to support the attachment can reasonably support the proposed attachment considering the conditions of the street, the anticipated hazards from traffic to be encountered at the location and considering the wind, snow, ice and other conditions reasonably anticipated at the proposed location;

(e) the Director determines in the Director's judgment that the proposed attachment may be of excessive size or weight or would, in the opinion of the Director, otherwise subject City owned infrastructure to unacceptable levels of additional stress;

(f) the Director reasonably determines in the Director's judgment that the proposed attachment may jeopardize the reliability or integrity of the electric system or of individual units of City owned infrastructure, or violate generally applicable engineering principles;

(g) the proposed attachment would present a safety hazard;

(h) approval would impair the City's ability to operate or maintain City owned infrastructure in a reasonable manner as determined in the discretion of the Director;

(i) there is insufficient capacity or placement of the attachment would violate the National Electric Safety Code or the City's standard design criteria, and the City infrastructure cannot reasonably be modified or enlarged at the cost of the applicant;

(j) the applicant is not in compliance with any provision of this chapter; or
(k) the applicant fails or refuses to sign a written agreement presented by the Director to the applicant intended to assist with the implementation of the provisions of this chapter, intended to assist with the implementation of the policies and regulations developed by the Director pursuant to Section 451.30 (B) of this Code and intended to preserve the City's right to exclusive control of its City owned infrastructure placed within the right of way.

(2) If an application is denied, the Director shall notify the applicant in writing of the reason for the denial. If an application is denied, an applicant may file a new application that corrects the reason for the denial. If an application is denied, applicant may appeal the denial to the Director of Public Works no later than the 30th day after the date of the denial as prescribed by the Director. The Director of Public Works may appoint a specific staff member or third party to make a report and recommendation regarding the matter to the Director of Public Works. If the Director of Public Works upholds an original decision which denies an applicant all or substantially all requested attachment rights, the applicant may appeal to the City Council under Section 451.70 (*Appeal to the City Council*).

(D) *Additional costs*. The applicant or user is responsible for all costs as determined by the City to replace, enlarge, or upgrade City owned infrastructure to accommodate the applicant's or user's proposed attachment.

(E) *Permit Requirements*. (1) An applicant or user must pay the estimated usage charges for the first year of use in advance when the applicant obtains the permit.

(2) A user may not change the number, kind, location of attachments, the method of construction or installation, or the use of the attachments authorized under a permit without the prior written consent of the Director.

(3) Termination, revocation, or expiration of a user's franchise, permit or license to use a City street, highway, or right-of-way automatically terminates the user's attachment permit without further action by the City or notice to user.

451.60 USER'S DUTIES AND RESPONSIBILITIES.

(A) *Compliance with law*. A use shall comply with all applicable federal, state, and local laws, rules, and regulations, City policies, the National Electrical Code, the National Electrical Safety Code, and applicable industry standards.

(B) *Operational and maintenance requirements*.

(1) A user shall install, and continuously operate and maintain an approved attachment to prevent interference with the City's facilities, the City's use of City owned infrastructure, or the facilities or operations of other users.

(2) A user may not construe a contract, permit, correspondence, or other communication as affecting a right, privilege or duty previously conferred or imposed by the City to or on another person. The City reserves the right to continue or extend a right, privilege, or duty or to contract with additional users without regard to resulting economic competition.

(3) A user shall trim trees, with the appropriate permissions of the Minneapolis Park and Recreation Board, as necessary for the safe and reliable operation, use, and maintenance of the user's attachments, as prescribed by the standards promulgated by the Minneapolis Park and Recreation Board, the city arborist, the Director or other authority.

(4) A user may not co-lash or co-locate attachments without the prior written consent of the Director and subject to the conditions the Director reasonably requires.

(5) A user is solely responsible for the risk and expense of installation, operation, and maintenance of the user's attachments. The City does not warrant or represent that the City owned infrastructure is suitable for placement of a user's attachments. A user shall submit a structural engineering analysis by a Minnesota registered professional engineer certifying that the pole or other structure that is proposed to support the attachment can reasonably support the proposed attachment considering the conditions of the street, the anticipated hazards from traffic to be encountered at the location and considering the wind, snow, ice and other conditions reasonably anticipated at the proposed location. A user shall inspect the City owned infrastructure on which the user's attachments will be placed and shall base its determination of the suitability of the City owned infrastructure for user's purposes on such inspection, on the a structural engineering analysis by a Minnesota registered professional engineer certifying that the pole or other structure that is proposed to support the attachment can reasonably support the proposed attachment considering the conditions of the street, the anticipated hazards from traffic to be encountered at the location and considering the wind, snow, ice and other conditions reasonably anticipated at the proposed location. and upon such further information as the user determines is relevant. A user must accept the City owned infrastructure "as is" and "where is" and assumes all risks related to the use. The City is not liable for any damage to attachment(s) due to an event of damage to the pole or premises.

(6) If the Director determines that a user's attachments impair the safety or structural integrity of City owned infrastructure, the Director may require the user, at user's sole expense and risk, to change, move, remove, or rearrange the attachments. The Director may also require a user to move or rearrange its attachments to maximize the available useable infrastructure and accommodate the attachments of an additional user, unless the movement or rearrangement of attachments materially impairs the use or function of the existing user's system. An existing user is only required to comply with this paragraph if the additional user agrees to compensate the existing user for its actual costs to move or rearrange attachments. If a user fails or refuses to comply with the Director's request to change, move, remove or rearrange any of its attachments, the attachments become unauthorized. The City may change, move, remove, or rearrange an unauthorized attachment without liability to user and at user's sole cost.

(7) The Director may inspect, at any time, the construction or installation of a user's attachments on City owned infrastructure. If the Director determines that a user's installation or construction may violate this chapter, the National Electric Code, the National Electric Safety Code, the City's standards for the City owned infrastructure involved, or the conditions of the user's application or permit, the Director may immediately suspend the user's construction or installation activities. The Director shall send written notice to the user not later than the third business day after a suspension identifying the alleged violation. A suspension under this paragraph is effective until the user corrects the alleged violation, at the user's sole expense. A user may appeal a suspension under this subsection to the Director of Public Works.

(8) A user may not transfer, assign, convey, or sublet an attachment permit without Director's prior written consent. A transfer, assignment, conveyance, or subletting of an attachment permit without the Director's prior written consent is not binding on the City.

(9) As a condition of the user having its facilities in City right of way and on City owned infrastructure placed within the right of way the user agrees to and shall, to the extent permitted by law, defend, indemnify and hold harmless the City, its employees, officers, agents and contractors against any claim of liability or loss of any kind, including administrative orders and regulations, and specifically including, without limitation, any claim of liability or loss from

personal injury or property damage resulting from or arising out of the presence of user's equipment in City right of way or on City owned infrastructure placed within the right of way and also as to any willful misconduct of the user, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the willful misconduct of the City, or its employees, officers, contractors or agents.

(10) The City shall not be liable to the user, or any of its respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, use of rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if the City has been advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise that is related to, arises out of, flows from or is, in some part, caused by user's attachment to or use of City owned infrastructure.

(C) *Termination.*

(1) The City may immediately suspend the permission of a user to make new or additional attachments if the user materially fails to comply with the terms of its franchise, permit or license, or if the City provides written notice to the user. If the user fails to cure the default on or before the 60th day after receipt of the notice, the City may terminate the user's attachment permit.

(2) A user shall immediately begin removal of its attachments after termination of a user's attachment permit for violations of the terms of a franchise, permit, license or other authority, a voluntary termination by a user, or a termination by the City for cause. Unless the Director grants an extension of time, a user must remove all attachments not later than the 60th day after the effective date of termination.

(3) After termination of a user's attachment permit, the user must comply with the terms of this chapter, the user's franchise, permit, license, or other authority until all attachments are removed.

(4) A user may appeal the termination of its attachment permit in accordance with Sections 451.50 (*Application to Use Utility Infrastructure*) and 451.70 (*Appeal to City Council*). While an appeal is pending, a user may continue to use its existing attachments but may not make, change, move, rearrange, construct, or install an additional attachment.

451.70 APPEAL TO CITY COUNCIL.

(A) If an applicant has been denied attachment rights substantially in their entirety under Section 451.50 (*Application to Use Utility Infrastructure*), or if a user's attachment permit has been terminated substantially in their entirety under Section 451.60 (*User's Duties and Responsibilities*), the applicant or user may appeal the denial to the city council. A person must file a written notice of appeal to the city council and with the Director no later than the 20th day after the date of the Director of Public Work's denial of the applicant or user's appeal. The notice of appeal shall include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name, address and telephone number of any current users of the specific item of infrastructure occupied by, or proposed to be occupied by, the appellant;
- (3) the decision being appealed;
- (4) the date of the decision being appealed; and

(5) the basis of the appeal, including a concise statement describing the reasons the appellant believes it was wrongfully denied an attachment permit or its attachment permit was wrongfully terminated.

(B) Upon receipt of a notice of appeal, the Director shall schedule a hearing before the appropriate City Council committee, and notify the appellant and any current users of the specific item of infrastructure occupied by, or proposed to be occupied by, the appellant of the time and date of the hearing by first class mail at least ten days before the date of the hearing. The appellant is the only party to the appeal.

(C) The appellant has the burden of proof to establish that the decision being appealed is incorrect and in the case of a decision requiring discretion or judgment, that the decision is an abuse of discretion.

(D) The City Council shall decide preliminary issues, including a request for postponement or continuance, or questions of appellant's standing to bring an appeal, before the hearing is opened.

(E) The city council may approve, modify, or overrule the Director's decision. The City Council shall consider the grounds for denial in Section 451.50 (*Application to Use Utility Infrastructure*) in its determination of an appeal of the denial of attachment rights. Council shall consider the grounds for termination in Section 451.50 (*Application to Use Utility Infrastructure*) and 451.60 (*User's Duties and Responsibilities*) in its determination of an appeal of the termination of attachment.

451.80 UNAUTHORIZED ATTACHMENTS PROHIBITED.

(A) No person shall knowingly affix, install, place, attach, maintain, or fail to remove an unauthorized attachment to City owned infrastructure or other property of the City on demand by the City or any authorized representative thereof.

(B) No person shall use an attachment on City owned infrastructure or other property of the City to provide a service not authorized by a City franchise, permit, license, or other authority.

(C) Each unauthorized attachment or use is a separate offense. Each day a violation of this chapter continues is a separate offense.