COUNCIL BILL NO. 2019-003 ORDINANCE NO. _____

AN ORDINANCE of the city of Joplin, Missouri establishing procedures and requirements relating to construction and deployment of small wireless facilities.

WHEREAS, the City has previously regulated the construction and deployment of Wireless Facilities through a variety of ordinances and practices; and

WHEREAS, the General Assembly of the state of Missouri determined that policies intended to encourage and streamline the deployment of Small Wireless Facilities and to help ensure that robust and dependable wireless radio-based communication services and networks are available throughout the State of Missouri is a matter of legitimate statewide concern; and,

WHEREAS, in HB 1991 (sections 67.5110 to 67.5121, RSMo.) (the "Uniform Small Wireless Facility Deployment Act" or the "Act"), the General Assembly adopted a uniform statewide framework for the deployment of Small Wireless Facilities and utility poles in the State of Missouri; and

WHEREAS, in the Act, the General Assembly directs an Authority, defined to include a Missouri municipality, to adopt an ordinance or develop an agreement that makes available to wireless providers rates, fees and other terms that comply with the provisions of the Act; and,

WHEREAS, it is determined by the City Council of the City of Joplin that it is in the best interests of the City, its residents and businesses to enact an ordinance to establish a uniform and efficient approach to handling requests for the deployment of Small Wireless Facilities and utility poles in order to implement the requirements of the Act directed at the City; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCILOF THE CITY OF JOPLIN, MISSOURI, AS FOLLOWS:

Section 1. The City's Chapter 106 on Streets, Sidewalks and Other Public Places, is hereby amended by adding a VII, entitled "Small Cell Management", in substantially the form as follows:

"Sec. 106-160. Applicability:

To the extent permitted by law, this [Ordinance] shall apply to all Persons desiring to construct, operate, or maintain Small Wireless Facilities within the City.

Sec. 106-161 Definitions:

(a) Definitions and Usage – General.

For the purposes of this [Ordinance], the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense and vice versa, words in the plural number include the singular number and vice versa, and masculine gender includes the feminine gender and vice versa. The words 'shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated or contrary to the context, terms, phrases, words, and abbreviations not defined herein shall be given the meaning set forth in § 67.5110-67.5121 RSMo, and if not defined therein, the City Code, and, if not defined therein, their common and ordinary meaning. For further convenience, the first letter of terms, phrases, words, and abbreviations defined in this [Ordinance] have been capitalized, but an inadvertent failure to capitalize such letter shall not affect its meaning, nor shall the inadvertent capitalization of the first letter of a term, phrase, word or abbreviation not defined herein affect the meaning thereof.

(b) "Antenna", communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;

(c) "Applicable Codes", uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to such codes enacted to prevent physical property damage or reasonably foreseeable injury to persons;

(d) "Applicable Law," state and federal law and regulation applicable to the construction, installation, deployment or Collocation of Wireless Facilities and Utility Poles, including those laws and regulations of general applicability that do not apply exclusively to Wireless Facilities or Wireless Providers such as local ordinances and state law relating to use of Right-of-Way;

(e) "Applicant", any person who submits an application and is a wireless provider;

(f) "Application", a request submitted by an applicant to the City for a permit to collocate small wireless facilities on a utility pole or wireless support structure, or to approve the installation, modification, or replacement of a utility pole;

(g) "City Utility Pole", means a utility pole, as defined below, owned, managed, or operated by or on behalf of the City; except municipal electric utility distribution poles or facilities;

(h) "Collocate" or "Collocation", to install, mount, maintain, modify, operate, or replace small wireless facilities on or immediately adjacent to a wireless support structure or utility pole, provided that the small wireless facility antenna is located on the wireless support structure or utility pole;

(i) “Decorative Pole”, a City Utility Pole that is specially designed and placed for aesthetic purposes;

(j) “Fee”, a one-time, nonrecurring charge;

(k) "Historic district", a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C, or are otherwise located in a district made subject to special design standards adopted by a local ordinance or under state law as of January 1, 2018, or subsequently enacted for new developments;

(l) "Micro wireless facility", a small wireless facility that meets the following qualifications:

(a) Is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height; and

(b) Any exterior antenna no longer than eleven inches;

(m) “Small Wireless Facility Permit”, a written authorization from a designated City official required by the City to collocate Small Wireless Facilities in or outside the Right-of-Way, or to install, replace, maintain or operate a Utility Pole inside the Right-of-Way for any purpose;

(n) “Rate”, a recurring charge;

(o) “Right-of-Way”, the area on, below, or above a public roadway, highway, street, sidewalk, alley, or similar property used for public travel, but not including a federal interstate highway, railroad right-of-way, or private easement;

(p) “Small Wireless Facility”, a wireless facility that meets both of the following qualifications:

(1) Each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and

(2) All other equipment associated with the wireless facility, whether ground or pole mounted, is cumulatively no more than twenty-eight cubic feet in volume, provided that no single piece of equipment on the utility pole shall exceed nine cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the small wireless facility.

The following types of associated ancillary equipment shall not be included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs and related conduit for the connection of power and other services;

(q) "Technically feasible", by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility or its design or site location can be implemented without a reduction in the functionality of the small wireless facility;

(r) "Utility Pole", a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities;

(s) "Wireless Facility", equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include:

(1) The structure or improvements on, under, or within which the equipment is collocated;

(2) Coaxial or fiber-optic cable between wireless support structures or utility poles;

(3) Coaxial or fiber-optic cable not directly associated with a particular small wireless facility; or

(4) A wireline backhaul facility;

(t) "Wireless Infrastructure Provider", any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment or wireless facilities but that is not a wireless services provider;

(u) “Wireless Provider”, a wireless infrastructure provider or a wireless services provider;

(v) “Wireless Services”, any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities;

(w) “Wireless Services Provider”, a person who provides wireless services;

(x) “Wireless Support Structure”, an existing structure, such as a monopole or tower, whether guyed or self-supporting, designed to support or capable of supporting wireless facilities; an existing or proposed billboard; an existing or proposed building; or other existing or proposed structure capable of supporting wireless facilities, other than a structure designed solely for the collocation of small wireless facilities. Such term shall not include a utility pole.

(s) "Wireline backhaul facility", a physical transmission path, all or part of which is within the right-of-way, used for the transport of communication data by wire from a wireless facility to a network.

Sec. 106-162. General Standards:

(a) Neither the City, nor any person owning, managing, or controlling City Utility Poles, shall enter into an exclusive arrangement with any person for use or management of the Right-of-Way for the Collocation of Small Wireless Facilities or the installation, operation, marketing, modification, maintenance, management, or replacement of City Utility Poles within the Right-of-Way, or for the right to attach to such City Utility Poles within the Right-of-Way.

(b) The City, in applying the provisions of this [Ordinance], will act in a competitively neutral manner with regard to other users of the Right-of-Way.

(c) Nothing in this [Ordinance] limits the ability of the City to require an Applicant to obtain one or more permits of general applicability that do not apply exclusively to Wireless Facilities in addition to the Permit required by this [Ordinance] in order to Collocate a Small Wireless Facility or install a new, modified, or replacement Utility Pole associated with a Small Wireless Facility.

(d) The City may require a Permit under Applicable Codes, existing City ordinances, or this [Ordinance], with reasonable conditions, for work in a Right-of-Way that will involve excavation,

affect traffic patterns, obstruct traffic in the Right-of-Way, or materially impede the use of a sidewalk.

(e) A Small Wireless Facility must comply with reasonable, objective, and cost- effective concealment or safety requirements determined by the City.

(f) Subject to Subsection (h) of section 4 of [this Ordinance], and except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. Section

1.1307(a)(4) of the Federal Communications Commission rules, the City may require reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures, published in advance, for Small Wireless Facilities or Utility Poles placed in a Historic District. Any such design or concealment measures shall not have the effect of prohibiting any Wireless Provider's technology, nor shall any such measures be considered a part of the Small Wireless Facility for purposes of the size restrictions in the definition of Small Wireless Facility.

(g) Right-of-Way users, upon adequate notice and at the facility owner’s own expense, shall relocate facilities as may be needed in the interest of public safety and convenience.

(h) Except as otherwise provided in this [Ordinance] and Applicable Law, in reviewing applications for Small Wireless Facilities, Wireless Support Structures and Utility Poles, the City will exercise zoning, land use, planning, and permitting authority within its territorial boundaries.

(i) Nothing in this [Ordinance] shall be interpreted to impose any new requirements on cable providers for the provision of such service.

(j) Small Wireless Facilities or Utility Poles constructed or operational before August 28, 2018, which were approved by the City by permit or agreement may remain installed and be operated under the requirements of this [Ordinance].

(k) The City recommends, but does not require, the location and collocation of wireless communication equipment on existing structures thereby minimizing new visual, aesthetic and public safety impacts, effects upon the natural environment, and to reduce the need for additional poles.

Sec. 106-163. Permitting Provisions:

(a) Permit Requirements – Inside the Right-of-Way.

Any Person desiring to Collocate Small Wireless Facilities, or to install, replace, maintain or operate a Utility Pole, inside the Right-of-Way must first apply for and obtain a Permit, in addition to any other required permit, license, or authorization that is generally applicable and does not apply exclusively to Wireless Facilities.

(1) The Collocation of Small Wireless Facilities and the installation, maintenance, modification, operation, and replacement of Utility Poles along, across, upon, and under the Right-of-Way is not subject to zoning review or approval; except that the placement of new or modified Utility Poles in the Right-of-Way in areas zoned single-family residential or as historic as of August 28, 2018, remain subject to any applicable zoning

requirements that are consistent with §§ 67.5090 to 67.5103, RSMo.

(2) Small Wireless Facilities and Utility Poles shall be installed and maintained so as not to obstruct or hinder the usual travel, including pedestrian travel, or public safety on the Right-of-Way or obstruct the legal use of the Right- of-Way by the City or other authorized Right-of-Way users.

(3) A new, replacement, or modified Utility Pole installed in the Right-of-Way shall not be subject to zoning requirements so long as the Utility Pole does not exceed the greater of ten feet in height above the tallest existing Utility Pole in place as of January 1, 2019 located within five hundred feet of the new Utility Pole in the same Right-of-Way, or fifty feet above ground level. A new, modified, or replacement Utility Pole that exceeds these height limits shall be subject to applicable City zoning requirements that apply to other Utility Poles, and that are consistent with Sections 67.5090 to 67.5103, RSMo.

(4) New Small Wireless Facilities in the Right-of-Way shall not extend more than ten feet above an existing Utility Pole in place as of August 28, 2018.

(5) Small Wireless Facilities on a new Utility Pole shall not extend above the height permitted for a new Utility Pole in Subsection 3 above.

(6) A Wireless Provider shall be permitted to replace Decorative Poles when necessary to Collocate a Small Wireless Facility, but any replacement pole shall reasonably conform to the design aesthetics of the Decorative Pole or Poles being replaced. The term ‘reasonably conform’

as used herein, shall mean that the design aesthetics of the replacement pole shall be as nearly identical to the Decorative Pole replaced as is feasible. The [City Engineer or other designated position] is authorized to determine if the replacement pole reasonably conforms, based upon the reasonable objective design standards published in advance by the City.

(7) The City may require replacement of a City Utility Pole that is proposed to be used for a Collocation on a nondiscriminatory basis for reasons of safety and reliability, including a demonstration that the Collocation would make the City Utility Pole structurally unsound.

(8) Wireless providers are recommended, but not required to allow other telecommunication providers to share their poles when technically feasible, in return for a reasonable fee, in order to mitigate the impact of new pole construction upon City neighborhoods. The Director of Public Works shall have final authority over any disputes among telecommunication providers regarding pole use issues.

(9) If a new pole is to be installed, it must be at least 350 feet away from other poles unless the wireless provider is able to give sufficient documentation that this spacing requirement prevents them from adequately serving a location.

If these spacing requirements limit or provide an adverse impact in providing service to a certain location, wireless providers are allowed to apply for a variance request or waiver or exception to this clause.

(b) Permit Requirements – Outside the Right-of-Way.

(1) The Collocation of Small Wireless Facilities in or on property not zoned primarily for single-family residential use is not subject to zoning review or approval.

(2) The City will allow Collocation of Small Wireless Facilities on City Wireless Support Structures and City Utility Poles that are located on City property outside the right-of-way to the same extent, if any, that it allows access to such structures for other commercial projects or uses. Any such Collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the City and the Wireless Provider, and not otherwise governed by this [Ordinance].

(3) The City shall not enter into an exclusive agreement with a Wireless Provider concerning City Utility Poles or City Wireless Support Structures that are located on City property outside the Right-of-Way, including stadiums and enclosed arenas, unless the agreement meets the following requirements:

a. The Wireless Provider provides service using a shared network of Wireless Facilities that it makes available for access by other Wireless Providers on reasonable and nondiscriminatory rates and terms that shall include use of the entire shared network, as to itself, an affiliate, or any other entity; or,

b. The Wireless Provider allows other Wireless Providers to Collocate Small Wireless Facilities on reasonable and nondiscriminatory rates and terms, as to itself, an affiliate, or any other entity.

(c) Permit Process for an Applicant seeking to construct Small Wireless Facilities in or outside the Right-of-Way, or to install, replace, maintain or operate a Utility Pole inside the Right-of-Way.

An Applicant seeking to Collocate Small Wireless Facilities in or outside the Right-of-Way, or to install, replace, maintain or operate a Utility Pole inside the Right-of-Way, must first submit an Application for a Permit to the [City Engineer or other designated position]. The [City Engineer or other designated position] shall design and make available to Applicants a standard Application form, consistent with the provisions of this [Ordinance] which all Applicants must use in order to accomplish the purposes of this [Ordinance]. Except for the requirements in Subsection 2(b) below, an Applicant shall not be required to provide more information to obtain a Permit under this [Ordinance] than other communications service providers that are not Wireless Providers.

(1) An Application for a Permit shall include the following:

a. Construction and engineering drawings which demonstrate compliance with the criteria in Section 4(f);

b. City compatible GIS files showing where these poles are located

c. An attestation that the Small Wireless Facilities comply with the volumetric limitations in the definition of Small Wireless Facility;

d. Information on the height of any new, replacement, or modified Utility Pole;

e. Applicable indemnity, insurance, performance bond information required in Section 6;

f. An Applicant that is not a Wireless Services Provider must provide evidence of agreements or plans demonstrating that the Small Wireless Facilities will be operational for use by a Wireless Services Provider within one year after the Permit issuance date, unless the City and the Applicant agree to extend this period or if the Applicant notifies the City the delay is caused by lack of commercial power or communications transport facilities. An Applicant that is a Wireless Services Provider must provide this information by attestation.

g. Plans and detailed cost estimates for any make-ready work as needed.

1. The Applicant shall be solely responsible for the cost of any make-ready work; and

h. Projected commencement and termination dates for the Permit, or if such dates are unknown at the time the Permit is issued, a provision

requiring the Permit holder to provide [City Engineer or other designated position] with reasonable advance notice of such dates once they are determined.

(d) Fees and Rates. Each such Application shall be accompanied by payment of fees as designated in this [Ordinance].

(1) General.

a. Any fees collected pursuant to this Subsection will be used only to reimburse the City for its actual incurred costs and will not be used to generate revenue to the City above such costs.

b. The City may not require or accept in-kind services in lieu of any fee.

c. The rates to Collocate on City Utility Poles shall be nondiscriminatory regardless of the services provided by the Collocating Applicant.

(2) Application Fee.

a. The total fee for an Application for the Collocation of a Small Wireless Facility on an existing City Utility Pole is $100 per Small Wireless Facility.

b. An Applicant filing a consolidated Application shall pay $100 per Small Wireless Facility included in the consolidated Application.

c. The total fee for an Application for the installation, modification, or replacement of a Utility Pole and the Collocation of an associated Small Wireless Facility is $500 per Utility Pole.

(3) Collocation Rate.

a. The rate for Collocation of a Small Wireless Facility to a City Utility Pole is $150 per City Utility Pole per year.

(4) Right-of-Way Permit Fee.

a. The total fee for a Right-of-Way permit associated with the installation of Small Wireless Facilities in the Right-of-Way is $50.00 per Small Wireless Facility.

(e) Timing for Processing of an Application.

(1) Within fifteen days of receiving an Application, the City shall determine and notify the Applicant in writing whether the Application is complete. If an Application is incomplete, the City shall specifically identify the missing information in writing. The processing deadline in Subdivision 2 of this Subsection is tolled from the time the City sends the notice of incompleteness to the time the Applicant provides the missing information. That processing deadline may also be tolled by agreement of the Applicant and the City.

(2) The City shall process and approve or deny an Application for Collocation of a Small Wireless Facility within forty-five (45) days of receipt of the Application. The Application shall be deemed approved if not approved or denied within this forty-five (45) day period.

(3) The City shall process and approve or deny an Application for installation of a new, modified, or replacement Utility Pole associated with a Small Wireless Facility within sixty (60) days of receipt of the Application. The Application shall be deemed approved if not approved or denied within this sixty-day (60) day period.

(4) An Applicant may file a consolidated Application and receive a single Permit for the Collocation of multiple Small Wireless Facilities.

a. An Application may include up to twenty separate Small Wireless Facilities; provided that they are for the same or materially same design of Small Wireless Facility being Collocated on the same or materially the same type of Utility Pole or Wireless Support Structure, and geographically proximate. The Application shall provide information sufficient for the [City Public Works Director or other designated position] to determine whether the Applicant has met the requirements of this Subsection. The [City Public Works Director or other designated position] shall have discretion to determine whether the Application meets the requirements of this Subsection.

b. If the City receives individual Applications for approval of more than fifty (50) Small Wireless Facilities or consolidated Applications for approval of more than seventy-five (75) Small Wireless Facilities within a fourteen (14) day period, whether from a single Applicant or multiple Applicants, the City may, upon its own request, obtain an automatic thirty (30) day extension for any additional Collocation or replacement or installation Application submitted during that fourteen day period or in the fourteen day period immediately following the prior fourteen (14) day period. The City will promptly communicate its request to each and any affected Applicant.

c. The denial of one or more Small Wireless Facilities in a consolidated Application shall not delay processing or constitute a basis for denial of any other Small Wireless Facilities in the same consolidated Application or the consolidated Application as a whole.

(5) The City shall provide a good faith estimate for any make-ready work necessary to enable a City Utility Pole to support the requested Collocation by a Wireless Provider, including pole replacement if necessary, within

sixty (60) days after receipt of a complete Application. Make-ready work, including any pole replacement, shall be completed within sixty (60) days of written acceptance of the good faith estimate and advance payment, if required, by the Applicant.

(6) An Application that is not acted on within the specified time period is deemed approved.

(7) For any Application denied:

a. The City shall document the complete basis for a denial in writing, and send the documentation to the Applicant on or before the day the City denies the Application.

b. The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial without paying an additional application fee.

c. The City shall approve or deny the revised Application within thirty

(30) days. Any subsequent review shall be limited to the deficiencies cited in the denial.

(8) The City will not institute, either expressly or de facto, a moratorium on filing, receiving, or processing Applications or issuing Permits or other approvals, if any, for the Collocation of Small Wireless Facilities or the installation, modification, or replacement of Utility Poles to support Small Wireless Facilities.

a. If doing so would be consistent with 47 U.S.C. § 253(a), particularly as interpreted by the FCC's Declaratory Ruling adopted on August 2, 2018 (FCC 18-111), the City may institute a temporary moratorium on Applications for Small Wireless Facilities and the Collocation thereof for no more than thirty days in the event of a major and protracted staffing shortage that reduces the number of personnel necessary to receive, review, process, and approve or deny applications for the Collocation of Small Wireless Facilities by more than fifty (50) percent.

(f) Denial of an Application. An Application for a proposed collocation of a Small Wireless Facility or installation, modification, or replacement of a Utility Pole

otherwise meeting the requirements of Sections 4(a)(1) or 4(b)(1) may be denied if the action proposed in the Application could reasonably be expected to:

(1) Materially interfere with the safe operation of traffic control equipment or City-owned communications equipment;

(2) Materially interfere with sight lines or clear zones for transportation, pedestrians, or non-motorized vehicles;

(3) Materially interfere with compliance with the Americans with Disabilities Act, or similar federal or state standards regarding pedestrian access or movement;

(4) Materially obstruct or hinder the usual travel or public safety on the Right- of-Way;

(5) Materially obstruct the legal use of the Right-of-Way by the City, utility, or other third party;

(6) Fail to comply with Applicable Codes, including nationally recognized engineering standards for Utility Poles or Wireless Support Structures;

(7) Fail to comply with the reasonably objective and documented aesthetics of a Decorative Pole and the Applicant does not agree to pay to match the applicable decorative elements;

(8) Fail to comply with reasonable and nondiscriminatory undergrounding requirements contained in City ordinances as of January 1, 2018, or subsequently enacted for new developments, that require all utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing Utility Poles in a Right-of-Way without prior approval, provided that such requirements include a waiver or other process of addressing requests to install such Utility Poles and do not prohibit the replacement or modification of existing Utility Poles consistent with Applicable Law or the provision of Wireless Services; or

(g) Approval of an Application.

(1) The [City Engineer or other designated position] shall review each Application for a Permit and, upon determining that 1) the Applicant has submitted all necessary information; 2) there is no basis under Section 4(g) to deny the Application; and 3) the Applicant has paid the appropriate Fee, the [City Engineer or other designated position] shall issue the Permit.

(2) If the City approves an Application, the Applicant is authorized to:

a. Undertake the installation or Collocation which must be completed within one year of the permit issuance date unless the City and the Applicant agree to extend this period, or the Applicant notifies the City that the delay is caused by a lack of commercial power or communications transport facilities to the site.

b. Operate and maintain the Small Wireless Facilities and any associated Utility Pole covered by the Permit for a period of not less than ten years, which shall be renewed for equivalent durations so long as they are in compliance with the criteria listed in Subsection 4(f) of this [Ordinance].

(3) The City may approve a Permit subject to a reservation to reclaim space on the Utility Pole, when and if needed, to meet the Utility Pole owner's core utility purpose or a documented City plan projected at the time of the Application.

(h) No Application Required. No Application is required for:

(1) Routine maintenance on previously permitted Small Wireless Facilities;

(2) The replacement of Small Wireless Facilities with Small Wireless Facilities that are the same or smaller in size, weight, and height; or

(3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between Utility Poles in compliance with Applicable Codes.

A person performing the permitted acts under this Subsection may be required to provide the City with a description of any new equipment installed so that the City may maintain an accurate inventory of the Small Wireless Facilities at a particular location.

Sec. 106-164. Construction Standards:

(a) The construction, operation, maintenance, and repair of Small Wireless Facilities shall be in accordance with Applicable Codes and relevant City ordinances

pertaining to construction, operation, maintenance, and repair inside or outside the Right-of-Way.

(b) All Small Wireless Facilities shall be installed and located with due regard for minimizing interference with the public and with other users of a Right-of-Way, including the City.

(c) An Applicant shall not place Small Wireless Facilities where they will damage or interfere with the use or operation of previously installed facilities, or obstruct or hinder the various utilities serving the residents and businesses in the City of their use of any Right-of-Way.

(d) Any and all Rights-of-Way disturbed or damaged during the construction of Small Wireless Facilities shall be promptly repaired or replaced by the Applicant to its functional equivalence as existed before the disturbance or damage.

(e) Any Wireless Infrastructure Provider, contractor or subcontractor must be properly licensed under laws of the State and all applicable local ordinances.

(f) Each Wireless Infrastructure Provider, contractor or subcontractor shall have the same obligations with respect to its work as Wireless Services Provider would have hereunder and Applicable Law if the work were performed by the Wireless Services Provider. The Wireless Services Provider shall be responsible for ensuring that the work of Wireless Infrastructure Providers, contractors or subcontractors is performed consistent with their Permits and Applicable Law and shall be responsible for promptly correcting any acts or omissions by a Wireless Infrastructure Provider, contractor or subcontractor.

Sec. 106-165. Indemnity, Insurance, Performance Bonds:

(a) Indemnity.

(1) Wireless Providers shall indemnify and hold the City, its officers and employees harmless against any damage or personal injury caused by the negligence of the Wireless Provider or its employees, agents, or contractors.

(b) Insurance.

(1) As part of the Permit process, a Wireless Provider must provide proof of liability insurance coverage against any damage or personal injury caused by the negligence of the Wireless Provider or its employees, agents, or contractors. The Wireless Provider’s liability insurance policy must name the City or its officers and employees as additional insureds.

(2) In the alternative, a Wireless Provider must demonstrate that it has in effect a comparable self-insurance program.

(c) Performance Bond.

(1) As part of the Permit process, a Wireless Provider must post a performance bond of $1,500 per Small Wireless Facility. The total bond amount across all facilities cannot exceed $75,000.

(2) The purpose of the performance bond is to:

a. Provide for the removal of abandoned or improperly maintained Small Wireless Facilities, including those that the City determines need to be removed to protect public health, safety, or welfare;

b. Restore the Right-of-Way in connection with removals of Small Wireless Facilities from the Right-of-Way; and

c. Recoup rates or fees that have not been paid by a Wireless Provider in over twelve months, provided the Wireless Provider has been provided with reasonable notice form the City and has been given the opportunity to cure.

(3) Upon completion of the work associated with the Small Wireless Facilities covered by the performance bond to the satisfaction of the [City Engineer or other designated position], the [City Engineer or other designated position] shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established by the [City Engineer or other designated position] considering the nature of the work performed.

(4) Recovery by the City of any amounts under the performance bond or otherwise does not limit an Applicant's duty to indemnify the City in any way, nor shall such recovery relieve an Applicant of its obligations under a Permit or reduce the amounts owed to the City other than by the amounts recovered by the City under the performance bond, or in any respect prevent the City from exercising any other right or remedy it may have.

(d) Exemption

(1) Applicants that have at least twenty-five million dollars in assets in the State and do not have a history of permitting noncompliance within the City's jurisdiction shall be exempt from the insurance and bonding requirements otherwise required by this Section. The City may require an Applicant to provide proof by affidavit that its assets meet or exceed this requirement at the time of filing the Application.

Sec. 106-166. Miscellaneous Provisions:

(a) Compliance With Laws. Each Applicant shall comply with all applicable City ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established, to the extent that they are consistent with state and federal law.

(b) Franchises Not Superseded. Nothing herein shall be deemed to relieve an Applicant of the provisions of an existing franchise, license or other agreement or permit.

(c) Rights and Remedies:

(1) The exercise of one remedy under this [Ordinance] shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an Applicant of its obligations to comply with its Permits.

Remedies may be used alone or in combination; in addition, the City may exercise any rights it has at law or equity.

(2) The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provisions of this [Ordinance].

(3) No Applicant shall be relieved of its obligation to comply with any of the provisions of this [Ordinance] by reason of any failure of the City to enforce prompt compliance.

(d) Incorporation by Reference:

Any Permit granted pursuant to this [Ordinance] shall by implication include a provision that shall incorporate by reference this [Ordinance] into such Permit as fully as if copied therein verbatim.

(e) Calculation of Time:

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this [Ordinance] or any Permit, and a period of time is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

(f) Severability:

If any term, condition, or provision of this [Ordinance] shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in Applicable Law so that the provision that has been held invalid is no longer invalid, said provisions shall there upon return to full force and effect without further action by the City and shall thereafter be binding on the Applicant and the City.

Sec.106-167. Annexation:

The provisions hereof shall specifically apply to any lands or property annexed as the date of such annexation.

Sec. 106-168. Relocation of Facilities.

Whenever, by reason of changes in the grade or widening of a street or in the location or manner of constructing a water pipe, drainage channel, sewer, or other City-owned underground or above ground structure, it is deemed necessary by the City, in the interest of public safety and convenience, to move, alter, or change the location of underground or above ground facilities of a Wireless Provider, the Wireless Provider shall relocate such facilities, on alternative Right-of-Way provided by the City, if available, upon adequate notice in writing by the City, without claim for reimbursement or damages against the City.

Sec. 106.169. Standards Applicable To City.

Any standards in this [Ordinance] relating to Small Wireless Facilities shall be fully applicable to work performed by the City and its departments.

Sec. 106-170. Savings Clause.

Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplement or otherwise nullify any other ordinances of the City or requirements thereof, whether

or not relating to or in any manner connected with the subject written hereof, unless expressly provided otherwise herein or hereafter."

Section 2. The portions of this ordinance shall be severable. In the event that any portion of this ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions are valid, unless the court finds the valid portions of this ordinance are so essential and inseparably connected that it cannot be presumed that the City Council would not have enacted such provisions without the others.

Section 3. That this Ordinance shall be in full force and take effect from and after the date of its final passage by the City Council and approval by the Mayor.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2019, by a vote of _____.

_____

Gary L. Shaw, Mayor

ATTEST:

_____

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney