

INTRODUCED BY: Councilmember Steve McMahon

DATE: November 13, 2017

BILL NO. 9344

ORDINANCE NO. 7067

AN ORDINANCE TO AMEND CHAPTERS 100 AND 400 OF THE MUNICIPAL CODE OF THE CITY OF UNIVERSITY CITY, MISSOURI RELATED TO SELF-PREEMPTION AND REGULATION OF SMALL WIRELESS COMMUNICATION FACILITIES.

WHEREAS, various new state or federal statutes and regulations continue to be enacted, supplemented, promulgated, amended, as well as subjected to judicial challenge and invalidation regarding regulation of certain communications providers, services, and operations as they pertain to local rights-of-way, zoning regulations, and other municipal authority; and

WHEREAS, despite the uncertainty created by these circumstances, the City Council desires to continue to at all times ensure compliance with such changing applicable law, and, therefore, finds it in the best interest of the public to amend the Municipal Code of the City of University City ("Code") to be deemed to conform with any changes in state or federal law that may be validly enacted and lawfully applicable; and

WHEREAS, the City Council desires to enact a self-preempting provision to ensure that such self-preemption applies to any provisions of the Code that may be affected by the frequently-changing legal requirements imposed on cities until such provisions are amended or repealed, when appropriate; and

WHEREAS, the City has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antennas pursuant to its zoning powers established in Chapter 89 RSMo. and additionally pursuant to its general and specific police powers established by statute (including Chapters 67 and 392 RSMo.); and

WHEREAS, the City desires to establish regulations for true small wireless facilities; and

WHEREAS, a duly noticed and published public hearing was held regarding the proposed amended regulations in conformity with all requirements of Section 89.060 of the Missouri Revised Statutes and the Code, and the Planning and Zoning Commission has reviewed the amended regulations and given a recommendation of approval; and

WHEREAS, after review of the Planning and Zoning Commission's recommendation, the City Council finds it in the best interest of the City to amend and update its Code.

NOW, THEREFORE, BE IT ORDAINED BY COUNCIL OF THE CITY OF UNIVERSITY CITY, MISSOURI, AS FOLLOWS:

Section 1. The whereas clauses are hereby specifically incorporated herein by reference.

Section 2. Article II of Chapter 100, General Code Provisions, of the Municipal Code of the City of University City, Missouri, is hereby amended to enact a new Section to read as follows:

Section 100.085. Self-Preemption.

No provision of this Code shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this Code is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

Section 3. That Section 400.1380, Definitions, of Division 10 of Article V of Chapter 400, Amateur Radio Antennas and Towers, Parabolic Reflector Antennas and Telecommunications Antennas, Towers and Support Structures, of the Code of Ordinances of the City of University City, Missouri is hereby amended to repeal the existing definition of “Disguised Support Structure” and to enact three new definitions to read as follows:

DISGUISED SUPPORT STRUCTURE - Any free-standing, man-made structure designed for the support of Antenna, the presence of which is camouflaged or concealed as an appropriately placed and designed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observation towers, light standards, flag poles, and artificial trees. For purposes of this definition, a structure “camouflaged or concealed as an appropriately-placed and designed architectural or natural feature” shall meet the following additional criteria: (1) it is consistent with and contributes to and does not detract from the character and property values and use of the area and neighborhood in which it is located, (2) it does not contain distorted proportions, size, or other features not typically found on the type of structure or feature to which it is designed to replicate, (3) it cannot be identified as an Antenna Support Structure by persons with reasonable sensibilities and knowledge, (4) its equipment, accessory buildings, or other aspects or attachments relating to the Disguised Support Structure are wholly concealed using a manner consistent with and typically associated with the architectural or natural structure or feature being replicated, and (5) it is of a height, design, and type that would ordinarily occur at the location and neighborhood selected. Any Disguised Support Structure shall have as a condition of approval, unless expressly exempted in the approval, an obligation and corresponding covenant recorded on the property that runs with the land to the benefit of the City on behalf of the public, prohibiting modifications to the Disguised Support Structure that eliminate or are materially detrimental to the disguise, unless such proposed modification is approved by a duly authorized zoning or conditional use approval approved in the same manner as required for an original construction of such Disguised Support Structure. If the applicant does not wish to have such a covenant, the application shall not qualify as a Disguised Support Structure, unless another mechanism is proposed and approved to ensure that the disguise is not subsequently eliminated or materially detrimentally altered.

EXISTING STRUCTURE - Any structure capable of supporting an Antenna, Small Wireless Facility and associated equipment (other than a Tower or Disguised Support Structure) in full conformance with the design and other requirements of this Division and is: (1) existing prior to the date of all applicable permit applications seeking City authorization for installation of such facilities thereon and (2) not built or installed in anticipation of such specific installation or erected as a means to evade approvals applicable to a non-existing structure.

SMALL WIRELESS FACILITY - An Antenna and associated equipment of: (1) no more than four (4) cubic feet in volume (comprised of no more than twelve (12) square feet of exterior surface area

(excluding the surface width equal to the width of the support structure or pole to which it is mounted) on an imaginary enclosure around the perimeter thereof, excluding cable or cable conduit of four inches (4") or less); (2) located with the consent of the owner on an Existing Structure such as an electrical transmission tower, water tower, utility pole, building, or street light ; (3) not exceeding six feet (6') above the top of the Existing Structure for a total height not exceeding forty-five (45') feet (nor taller more than 6' above the average of similar poles within 300' feet); (4) a similar color to the Existing Structure; (5) any portion above the Existing Structure shall be concealed and of the same dimensions and appearance so as to appear to be a natural extension of the Existing Structure; provided that up to two (2) rod antenna less than two inches (2") in diameter and a height of not more than thirty-four inches (34") may be located exposed directly over the Existing Structure in lieu of an enclosure or concealment; and (6) shall not emit noise audible from the building line of any residential zoned or used property. Volume shall be the measure of the exterior displacement of the Small Wireless Facility.

Section 4. That Division 10 of Article V of Chapter 400, Amateur Radio Antennas and Towers, Parabolic Reflector Antennas and Telecommunications Antennas, Towers and Support Structures, of the Code of Ordinances of the City of University City, Missouri is hereby amended to enact a new subdivision M to division 2 of subsection B of Section 400.1400 to read as follows:

B. . . .

2. *Findings Required.* In addition to any other determinations specified by Article XI, the Plan Commission shall make findings as to the following based upon evidence submitted with the application or presented during the public hearing by the applicant or others. A recommendation by the Commission to approve or deny an application shall be based upon substantial evidence which shall be made a part of the written record of the meeting at which a final decision on the application is rendered. The written record shall include the Commission's comments on each of the following required findings:

. . .

(M) Notwithstanding anything herein, no finding required by this Division shall be made or considered if it is preempted or unlawful to be made or considered under applicable law under the circumstances at issue, and no other consideration that is now or may hereafter preempted by applicable law shall be considered by the Commission or deemed considered, notwithstanding any such otherwise applicable reference thereto in this Code.

Section 5. That Division 10 of Article V of Chapter 400, Amateur Radio Antennas and Towers, Parabolic Reflector Antennas and Telecommunications Antennas, Towers and Support Structures, of the Code of Ordinances of the City of University City, Missouri is hereby amended to enact a new to division 20 of subsection C of Section 400.1400 to read as follows:

C. . . .

20. *Safety Fall Zones Required.* In addition to other requirements herein, and unless otherwise provided or required by law, no Tower shall be located within the distance equal to one and one-half (1 ½) of the height of such Tower from any public rights-of-way, sidewalk or street, alley, parking areas, playground, or other building, and from the property line of any adjacent property. Towers shall be reasonably designed to reduce the potential damage to persons or property from falling ice or

equipment from the Tower or from wind damage or structural failure.

Section 6. That Division 10 of Article V of Chapter 400, Amateur Radio Antennas and Towers, Parabolic Reflector Antennas and Telecommunications Antennas, Towers and Support Structures, of the Code of Ordinances of the City of University City, Missouri is hereby amended to (1) repeal the references to “disguised support structure” in Subsection 400.1400.C.1 & C.3 and to enact a new Section 400.1405, Administrative Approval, to read as follows:

Section 400.1405. Administrative Approval.

A. *Administrative Approval.* The placement of Disguised Support Structures and Small Wireless Facility and associated equipment fully conforming with this Section and provisions of Section 400.1400 are permitted in all zoning districts as an Administrative Approval only as follows:

1. *Administrative Approval Defined.* For purposes of this Section, an Administrative Approval shall mean an approval by the Director of Community Development without requirement for a Conditional Use Permit for the types of facilities specified in this Section 400.1405, otherwise complying with all provisions of Section 400.1400, except as expressly waived or authorized to be waived in this Section.

2. *Disguised Support Structures* – The construction of a Disguised Support Structure, provided that all related equipment shall be placed underground or concealed within the structure. Equipment may be placed in an appropriately concealed cabinet if the Disguised Support Structure is incidental to an industrial, commercial, or other non-residential use and fits with the natural built environment or the Disguised Support Structure. Landscaping or other improvements may be required for Disguised Support Structures if needed to implement an approved disguise. A Disguised Support Structure including any portions thereon shall be separated from the property line of any adjacent property and from any sidewalk, playground, right-of-way, or other building at least a horizontal distance equal to one and one-half (1½) the height of the Disguised Support Structure.

3. *Fast-track “Small Wireless Facility” Approval.* Small Wireless Facilities may be approved in any district and location otherwise permitted for wireless facilities under the following simplified administrative process and requirements:

- a. *General Requirements.* A Small Wireless Facility may be approved administratively by submission of an application, including showing specifications, dimensions, photos, or drawings of completed installation, and property owner consent (“Owner Consent”). Owner Consent shall minimally include (1) written consent by all fee simple owners of the underlying real estate (or where located in street Rights-of-Way, the Rights-of-Way owner thereof), including when the proposed location is also in a utility easement and (2) written consent of the owner of the structure on which such Facility is to be placed. The applicant is responsible also to obtain and include the written consent of any other real property interest owner that is required to lawfully use that location for the proposed use. A fully complying Small Wireless Facility shall be exempt from wireless facility setback requirements 400.1400.C.3, the safety fall zones under 400.1400.C.20, as well as from the landscaping and parking requirements set forth in Subsections 400.1400.C.17 and E.4 unless determined by the Director of Community Development as applicable or

partly applicable to the specific location to ensure safety or to prevent unreasonable visual degradation or obstruction. Provided the applications are complete and address the requirements of this Section, the Director of Community Development shall endeavor to expedite Small Wireless Facility applications and may combine multiple applications/locations at one time in a single approval.

- b. *Additional requirements for location on public ways.* In addition to all other applicable requirements, when a Small Wireless Facility is located on a utility pole, street light, or similar structure over or directly adjacent to public or private streets, sidewalks, or other pedestrian or vehicle ways, (1) the height of all portions of the Small Wireless Facility shall be located at least eight feet (8') above ground level; (2) no ground equipment shall be permitted; and (3) no portions of the Small Wireless Facility shall extend horizontally from the surface of the pole or structure more than sixteen inches (16"). Location, placement, and orientation of the Small Wireless Facility shall, to the extent feasible, minimize the obstruction or visibility from the closest adjacent properties unless otherwise required by the City for safety reasons.
- c. *Modifications; waivers.* The Director of Community Development may for good cause shown by the Applicant increase any one or more of the maximum specifications qualifying as a "Small Wireless Facility" stated in the definition located in 400.1380 by up to fifty percent (50%) if the carrier demonstrates that it: (1) does not in any location nationally use equipment capable of meeting the specifications and the purpose of the equipment and (2) cannot feasibly meet the requirements. The City Council may further waive one or more of the requirements to qualify for Small Wireless Facility approval upon good cause shown by the applicant including as required by applicable law and provided a showing that the waiver is the minimum necessary to accomplish the purposes of this Section. The burden of proof for any waiver shall be wholly on the applicant and must be shown by clear and convincing evidence. The Director of Community Development may also, upon good cause shown, allow an Existing Structure to be replaced with a structure of materially the same height and appearance (including a width not generally not greater than ten percent (10%) wider), if the purposes of this Code are otherwise fully satisfied, including that the replacement structure is fits in with the built environment.

B. *Application procedures.* Applications for Administrative Permits shall be made on the appropriate forms to the Director of Community Development consistent with the requirements of this Section. Applications requesting any information that is prohibited by federal or state law under the applicable circumstance shall be deemed inapplicable to the subject application.

1. Applicant shall submit along with its completed application form:
 - a. A deposit of one thousand five hundred dollars (\$1,500.00); any amount not used by the City shall be refunded to the applicant upon written request after a final decision;
 - b. A detailed site plan, in accordance with Section 400.2600 and based on a closed boundary survey of the host parcel, shall be submitted indicating the exact location of

the facility, all dimensions and orientations of the facility and associated equipment, in addition to all existing and proposed improvements including buildings, drives, walkway, parking areas, and other structures, public right-of-way, the zoning categories of the subject and adjoining properties, the location of and distance to off-site residential structures, required setbacks, required buffer and landscape areas, hydrologic features, and the coordinates and height AGL of the Existing Structure, if applicable;

c. Proof of owner consent;

d. Certified structural analysis showing the structure has sufficient strength to support itself and the proposed equipment; and

e. All other information necessary to show compliance with the applicable requirements of this Section and Division 10 of Chapter 400.

2. The application shall be reviewed by the Director of Community Development to determine compliance with the above standards, including specifically design, location, safety, and appearance requirements and transmit the application for review and comment by other departments and public agencies as may be affected by the proposed facility.

3. In reviewing an application, the Director of Community Development may require the applicant to provide additional information, including technical studies. An application shall not be deemed complete until satisfaction of all application requirements and submission of all requested information as provided herein.

4. The Director of Community Development shall issue a decision on the permit within the time-frame permitted by applicable law. The Director of Community Development may deny the application or approve the application as submitted or with such modifications or conditions as are, in his/her judgment, reasonably necessary to protect the safety or general welfare of the citizens and property values consistent with and to affect the purposes of this Section and applicable provisions of Section 400.1400. The Director of Community Development may consider the purposes of this Section and the factors established in Section 400.1400 for granting a Conditional Use Permit as well as any other considerations consistent with Division 10 of Chapter 400. A decision to deny an application shall be made in writing and state the specific reasons for the denial.

C. *Historic Landmarks and Districts.* Unless otherwise required by law, no approval shall be issued for any Wireless Communications Facility within three hundred feet (300') of a Historic Preservation District or a National or Local Historic Landmark unless the Director of Community Development, Historic Preservation Commission and City Council determine such approval would create no significant negative visual impact or otherwise have a significant negative impact on the historical character and quality of any such District or Landmark. For collocation on any certified historic structure as defined in Section 253.545 RSMo., in addition to all other applicable time requirements, there shall be a thirty-day (30) time period before approval of an application during which one or more public hearings on collocation to a certified historic structure are held including as required by RSMo. § 67.5094. In addition to all other approvals required, for all sites located within a Historic Preservation District, a Certificate of Appropriateness shall also be required as well as a hearing as provided for in Sections 400.1590, 400.1600, and the ordinance establishing the specific Historic Landmark or District.

Section 7. This Ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED AND APPROVED THIS 27th DAY OF NOVEMBER, 2017.

By: Shelly Welsch
MAYOR

ATTEST:

LaBette Reese
INTERIM CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

John A. Mulgany Jr.
CITY ATTORNEY



