Legislation Details (With Text)

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Title:	Creating Chapter 134A of the Legislative Code (Title XII) pertaining to small wireless facilities.		
Sponsors:	Amy Brendmoen		
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Date	Ver.	Action By	Action	Result
4/15/2022	2	Mayor's Office	Signed	
4/13/2022	2	City Council	Adopted	Pass
4/6/2022	1	City Council	Laid Over to Final Adoption	Pass
3/16/2022	1	City Council	Laid Over to Second Reading	Pass
3/9/2022	1	City Council	Laid Over to Second Reading	Pass

Creating Chapter 134A of the Legislative Code (Title XII) pertaining to small wireless facilities.

WHEREAS, the City of Saint Paul seeks to support new and changing technologies in order to maximize the benefits they bring to our residents and businesses; and

WHEREAS, these technologies often require the use of the public right-of-way (ROW), which the City holds as an asset in trust for its residents; and

WHEREAS, regulation of the ROW contributes to the safety of surrounding areas; minimizes the potential adverse aesthetic impacts in the vicinity; permits reasonable reception and transmission of signals; and regulates costs to telecommunications businesses; and

WHEREAS, regulation of the ROW also ensures public safety through lawful, reasonable restrictions on Small Cell Facility antenna/equipment size, height, location, installation practices, and maintenance; and

WHEREAS, regulation of the ROW also lessens the adverse aesthetic impact on surrounding properties and

preserves the high-quality residential character of the City; and

WHEREAS, the City seeks to ensure equal access to telecommunications technology for all residents and businesses, including Small Cell Facility technology; now, therefore, be it

RESOLVED, that the Council of the City of Saint Paul does Ordain:

Chapter 134A of the Saint Paul Legislative Code is hereby created to read as follows:

Chapter 134A. - Small Cell Permits.

Sec. 134A.01 Definitions.

"Application" means a formal request, including all required and requested documentation and information, submitted by an Applicant to the City for a Small Cell Permit or Standard Small Cell Collocation License.

"Applicant" means a Person filing an Application for placement or modification of a Wireless Facility in the public right-of-way.

“City-owned Wireless Support Structure” means a City-owned new or existing structure in a public right-of-way that is designed to support or capable of supporting Collocated Small Wireless Facilities, as reasonably determined by the City.

“Collocate or Collocation” means to install, mount, maintain, modify, operate, or replace a Small Wireless Facility on, under, within, or adjacent to an existing City-owned Wireless Support Structure.

“Days” means calendar days.

“Director” means the Director of the Department of Public Works or their designee.

“Management Costs” means actual costs the City incurs in managing its rights-of-way, including such costs, if incurred, as those associated with issuing, processing, and verifying Small Cell Permit applications or Standard Small Cell Collocation Licenses; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking Small Cell Permits or Standard Small Cell Collocation Licenses.

"Permittee" means any Person or entity granted a Small Cell Permit pursuant to this chapter.

"Permittee-owned Wireless Support Structure" means a new or existing structure in a public right-of-way designed to support or capable of supporting Small Wireless Facilities, that is not owned by the City, and is or has been approved for a Small Cell Permit by the City pursuant to this chapter.

“Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

“Right-of-Way User” or “User” means (1) a telecommunications Right-of-Way User as defined by Minn. Stat., § 237.162, subd. 4; or (2) a person owning or controlling a facility in the right-of-way that is used or intended to

be used for providing utility service, and who has a right under law, franchise, or ordinance to use the public right-of-way.

"Small Cell Facility" or "Small Wireless Facility" means wireless communication facilities that meet the following conditions: (1) the facilities are mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than 10 percent taller than adjacent structures, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater ; and (2) with an antenna no more than six cubic feet and total wireless equipment no more than 28 cubic feet, or as defined by the Federal Communications Commission in 47 C.F.R §1.6002(l), as may be amended from time to time.

“Small Cell Permit” or “Permit” means a permit issued pursuant to this Chapter to install, mount, maintain, modify, operate, or replace a Small Wireless Facility on, under, within, or adjacent to a new or existing Permittee-owned Wireless Support Structure.

“Standard Small Cell Collocation License” or “License” means a license issued by the City to install, mount, maintain, modify, operate, or replace a Small Wireless Facility on, under, within, or adjacent to an existing City-owned Wireless Support Structure.

“Wireless Facility” means the equipment at a fixed location that enables the provision of Wireless Services between user equipment and a Wireless Service network, including equipment associated with Wireless Service, a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a Small Wireless Facility, but not including Permittee-owned

Wireless Support Structures, City-owned Wireless Support Structures, wireline backhaul facilities, or cables between utility poles or wireless support structures, or not otherwise immediately adjacent to and directly associated with a specific antenna.

“Wireless Service” means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless Service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).

Sec. 134A.02 - Small Cell Permit or License Required.

A. In General. No Person may install or place Small Cell Facilities in the right-of-way without first having obtained a Small Cell Permit or Standard Small Cell Collocation License.

B. Other Applicable Requirements. Obtaining a Permit or License does not relieve a Right-of-Way User of its duty to obtain all other licenses and necessary permits, including excavation and obstruction permits, and to pay all fees required by the City or other applicable rule, law or regulation. A Right-of-Way User must comply with all requirements of local, state and federal laws, including but not limited to Minn. Stat. §§ 216D.01-.09 (Gopher One Call Excavation Notice System) and Minn. R., ch. 7560. A User must perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the ROW pursuant to its permit, regardless of who does the work.

Sec. 134A.03 - Small Cell Permit and License Applications.

A. Submission. Applicant must submit electronic copies of any Application, amendments, or supplements to an Application, or responses to requests for information regarding an Application.

B. Content. An Applicant must submit an Application on the form approved by the Director, which must require

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the submission of all required fee(s), documents, information, and any other materials necessary to allow the Director to ensure that the proposed Small Cell Facility will comply with applicable federal and state law, the City Code, and will not endanger the public health, safety, or welfare.

C. Application Fees. Application fee(s) must be submitted with any Application. The Application fee must be an amount sufficient to recover a reasonable approximation of Management Costs and, for proposed Collocations, initial engineering survey and preparatory construction work associated with the Collocation.

D. Conditions. The Director may impose generally applicable and reasonable conditions upon the issuance of a Permit or License and the performance of the Applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

Sec. 134A.04 - Small Cell Permit Application processing.

A. Deadline for Action. The Director must approve or deny a Small Cell Permit Application within 90 days after filing of such Application, or within any timeline established by state or federal law, whichever is shorter. The Permit Application, and any associated building or encroachment

permit application will be deemed approved if the Director fails to approve or deny the Application within the review periods established in this section.

B. Denial of a Small Cell Permit.

1. The Director may deny a Permit Application for failure to meet the requirements and conditions of this chapter or if the Director determines that the denial is

a. necessary to protect the health, safety, and welfare of the public;

b. necessary to protect the right-of-way and its current use; or

c. necessary to protect any City asset or facility.

2. The denial of a Permit Application must be made in writing and must document the basis for the denial. The Director must notify the Applicant in writing within three business days of the decision to deny or revoke a permit. If an Application is denied, the Applicant may address the reasons for denial identified by the Director and resubmit its Application. If the Application is resubmitted within 30 days of receipt of the notice of denial, no additional Application fee will be imposed. The Director must approve or deny the resubmitted Application within 30 days after submission.

C. Tolling of Deadline. The 90-day deadline for action on a Small Cell Permit Application may be tolled if:

1. The Director receives Applications from one or more Applicants seeking approval of Permits for more than 30 small wireless facilities within a seven-day period. In such case, the Director may extend the deadline for all such Applications by 30 days by informing the affected Applicants in writing of such extension;

2. The Applicant fails to submit all required documents or information and the Director provides written notice of incompleteness to the Applicant within 30 days of receipt the Application. Upon submission of additional documents or information, the City will have ten days to notify the Applicant in writing of any still-missing information; or

3. The Director and a Small Cell Permit Applicant agree in writing to toll the review period.

Sec. 134A.05 - Revocation of Small Cell Permit for breach.

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A. Substantial Breach. The Director reserves their right, as provided herein, to revoke any Small Cell Permit without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by Permittee includes, but is not limited to, the following:

1. The violation of any material provision of the Permit;

2. An evasion or attempt to evade any material provision of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

3. Any material misrepresentation of fact in the Application for a Permit;

4. The failure to complete the work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the Permittee's

control; or

5. The failure to correct, in a timely manner, work that does not conform to a condition indicated on a written demand to remedy pursuant to paragraph B of this section.

B. Written Notice of Breach. If the Director determines that the Permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation, or any condition of the Small Cell Permit, the Director must make a written demand upon the Permittee to remedy such violation. The demand must state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the Director, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

C. Response to notice of breach. Within twenty-four (24) hours of receiving notification of the breach, Permittee must provide the Director with a plan, acceptable to the Director, that will cure the breach. Permittee's failure to so contact the Director, or Permittee's failure to timely submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit or the imposition of revised conditions to mitigate and remedy the breach.

Sec. 134A.06 - Appeal.

A. Basis of Appeal. An Applicant that (1) has been denied a Small Cell Permit or Standard Small Cell Colocation License; (2) has had a permit or Standard Small Cell Colocation License revoked; or (3) except as to existing, active and unexpired license agreements entered into before the effective date of this Chapter 134A, believes that the fees imposed are not in conformity with Minn. Stat. § 237.163, subd. 6, may have the denial, revocation, or fee imposition, upon written request, reviewed by the City Council.

B. Action on Appeal. The City Council must act on a timely written request at its next regularly scheduled meeting, provided the appeal is filed with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

Sec. 134A.07 - Administration.

A. Director. The Director of the Department of Public Works or their designee is responsible for administering this chapter. As part of the administration of this chapter, the Director may:

1. Interpret the provisions of this chapter;

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2. Ensure that Applications are reviewed by other applicable departments including but not limited to, the Department of Parks and Recreation;

3. Develop and implement rules and policies governing the placement and modification of wireless facilities consistent with the requirements of this chapter, state and federal law;

4. Develop and implement acceptable design and development rules for wireless facilities in the public rights-of-way;

5. Develop forms and procedures for submission of Applications for placement of wireless facilities, and proposed changes to any wireless support structure consistent with this chapter;

6. Determine the completeness of any Application and collect any fees or costs established by this chapter;

7. Establish written policy determining Management Costs to be paid by an Applicant;

8. Establish deadlines for submission of information related to an Application, and extend or shorten deadlines where appropriate, consistent with state and federal laws and regulations;

9. Issue any notices of incompleteness or requests for information as may be required to determine whether to process an Application, consistent with state and federal laws and regulations;

10. Request notice to members of the public that may be affected by the placement of the Wireless Facility and proposed changes to any wireless support structure, and require Applicants to submit proof of that notice;

11. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an Application; and

12. Take such other steps as may be required to timely act upon Applications for placement of wireless facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an Application.

Sec. 134A.08 - Standard Small Cell Collocation License Agreement Required.

A. Agreement and Payments. A Small Wireless Facility may only be Collocated on a City-owned Wireless Support Structure, or any other City asset in the right-of-way, after the Applicant has executed a Standard

Small Cell Colocation License agreement with the City. The Standard Small Cell Colocation License agreement may require payment of Application Fees, as set forth in Sec. 134A.03, in addition to the following:

1. Up to $150 per year for rent to Collocate on the City structure;

2. $25 per year for maintenance associated with the Collocation;

3. A monthly fee for electrical service as follows:

a. $73 per radio node less than or equal to 100 maximum watts;

b. $182 per radio node over 100 maximum watts; or

c. The actual costs of electricity, if the actual cost exceeds the foregoing.

B. Franchise Not Required. An Applicant will not be additionally required to obtain a franchise in order to Collocate.

C. Consolidated Applications. An Applicant may file a consolidated Application for addressing the proposed Collocation of up to 15 Small Wireless Facilities, or a greater number if agreed to by the City, provided that all Small Wireless Facilities in the Application:

1. are located within a two-mile radius;

2. consist of substantially similar equipment; and

3. are to be placed on similar types of wireless support structures.

D. Timing and Basis for Denial of Consolidated Collocation License Applications. The Director must approve or deny a License Application within 60 days after filing of such Application, or within any timeline established by state or federal law, whichever is shorter. In rendering a decision on a consolidated Application, the Director may approve some Small Wireless Facilities and deny others, but may not use denial of one or more Collocated facilities as a basis to deny all Small Wireless Facilities in the Application.

E. Tolling of Deadline. The 60-day deadline for action on a License Application may be tolled if:

1. The Director receives Applications from one or more Applicants seeking approval of Permits for more than 30 small wireless facilities within a seven-day period. In such case, the Director may extend the deadline for all such Applications by 30 days by informing the affected Applicants in writing of such extension;

2. The Applicant fails to submit all required documents or information and the Director provides written notice of incompleteness to the Applicant within 30 days of receipt the Application. Upon submission of additional documents or information, the City will have ten days to notify the Applicant in writing of any still-missing information; or

3. The Director and a License Applicant agree in writing to toll the review period.

F. Applicability to Existing Agreements. This section does not terminate any existing, active, and unexpired license agreement for any Small Wireless Facility on City-owned Wireless Support Structures (including but not limited to supplemental license agreements entered into by the City relating to Wireless Facilities).

Sec. 134A.09 - Conditional Use Permit.

~~The City may require a Person to obtain a conditional use permit to install a new, Permittee-owned Wireless Support Structure for the siting of a Small Wireless Facility in a right-of-way in a district or area zoned for single-family residential use or within a historic district established by federal or state law or City ordinance as~~

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~~of the date of Application for a Small Cell Permit.~~

A conditional use permit may be required under the provisions of Section § 65.310(a) of this code to install a new, Permittee-owned Wireless Support Structure for the siting of a Small Wireless Facility in a right-of-way in a district or area zoned for single-family residential use.

Sec. 134A.10 - Severability.

If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion will be deemed a separate, distinct, and independent provision and such holding will not affect the validity of the remaining portions thereof. Nothing in this chapter precludes the City from requiring a franchise agreement with the Applicant, as allowed by law, in addition to requirements set forth herein.

Section 3

This Ordinance shall take force and be in effect thirty (30) days following its passage, approval, and publication.

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