

21-500 ZONING, SITING LOCATION, AND DESIGN REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES

21-500.1 Purpose and Scope

The purpose of this Ordinance is to establish guidelines for the siting of towers and antennas within the jurisdiction of the City of Mt. Vernon. The goals of this Ordinance are to: (i) encourage the location of towers in non-residential areas and minimize the total number of towers throughout the community, (ii) encourage strongly the joint use of new and existing tower sites, (iii) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal, (iv) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas, (v) protect the public health and safety, and (vi) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.

The Illinois General Assembly enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act (50 ILCS 835) and effective on June 1, 2018, preempting some authority of the City of Mt. Vernon to regulate small wireless facilities. Provisions of the Illinois Small Wireless Facilities Deployment Act are incorporated within the Revised Code of Ordinances of the City of Mt. Vernon as Article 21, Section 21-500A. Small Wireless Facilities as defined herein are subject to Section 21-500A.

21-500.2 Definitions

A. "Abandonment" or "abandoned" means: (1) to cease operation for a period of sixty (60) or more consecutive days; (2) to reduce the effective radiated power of an antenna by seventy-five percent for sixty (60) or more consecutive days; (3) to relocate an antenna at a point less than eighty (80) percent of the height of an antenna support structure; or (4) to reduce the number of transmissions from an antenna by seventy-five percent for sixty (60) or more consecutive days. If there are two or more users of a single Wireless Communication Facility then this provision shall not be applicable to the supporting structure until all users have met the definition.

B. "Administrative approval" means successful completion of application process and issuance of a Building Permit.

C. "Antenna" means any system of electromagnetically tuned wires, poles, rods, reflecting discs or similar devices used to transmit or receive electromagnetic waves between terrestrial and/or orbital based points, including, but not limited to:

1. Whip antenna: An Omni-directional antenna, which transmits and receives radio frequency signals in a 360-degree radial pattern. Typically four inches or less in diameter.
2. Panel antenna: A directional antenna which transmits and receives radio frequency signals in a specific directional pattern of up to 120-degrees, and which is typically thin and rectangular in shape.
3. Tubular antenna: A tube typically twelve (12) inches in diameter containing either omni-directional or directional antenna, depending on the specific site requirement. This is often used as a means to mitigate the appearance of antennae on top of light standards and power poles.
4. Parabolic (or dish) antenna: A bowl-shaped device for the reception and/or transmission of

communications signals in a narrow and specific direction.

5. Ancillary antenna: An antenna that is less than twelve (12) inches in its largest dimension and that is not directly used to provide personal wireless communications services. An example would be a global positioning satellite (GPS) antenna.

D. "Co-location" means the placement and arrangement of multiple providers' antennae and equipment on a single support structure or equipment pad area.

E. "Conditional Use Permit" means a permit issued pursuant to this Section 21-500 and Article 21, Section 21-113 of the Revised Code of Ordinances.

F. "Electromagnetic field" means the field produced by the operation of equipment used in transmitting and receiving radio frequency signals.

G. "Equipment shelter" means the structure associated with a Wireless Communication Facility that is used to house electronic switching equipment, cooling systems, and back-up power systems.

H. "FAA" means the Federal Aviation Administration.

I. "FCC" means the Federal Communications Commission.

J. "Freestanding Wireless Communication Facility" means a wireless communication facility utilizing a monopole support structure.

K. "Height" means, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure even if the highest point is an antenna.

L. "Microcell" means a Wireless Communication Facility consisting of a single antenna that is either: (i) a panel antenna not more than four (4) feet in height and with an area of not more than five-hundred eighty (580) square inches; or (ii) a whip antenna, no more than four (4) inches in diameter and no more than six (6) feet in height; or (iii) a tubular antenna no more than eighteen (18) inches in diameter and six (6) feet in height; except Microcell shall not include a Small Wireless Facility defined within and subject to Article 21, Section 21-500A.

M. "Minor Facility" means a Wireless Communication Facility consisting of up to three (3) antennae, each of which is either (i) not more than four (4) feet in height and with an area of not more than five-hundred eighty (580) square inches; or (ii) a whip antenna, no more than four (4) inches in diameter and no more than six (6) feet in height; (iii) a tubular antenna no more than eighteen (18) inches in diameter and six (6) feet in height; and an associated equipment cabinet that is six (6) feet or less in height and no more than forty-eight (48) square feet in floor area; except Minor Facility shall not include a Small Wireless Facility defined within and subject to Article 21, Section 21-500A.

N. "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in Title 47, United States Code, Section 332 (c)(7)(C).

O. "Support structure" means any built structure, including any guy wires and anchors, to which antenna and other necessary associated hardware is mounted. Support structures include the following:

1. "Lattice tower" means a support structure which consists of a network of crossed metal braces, forming a tower which is usually triangular or square in cross-section.
2. "Guy tower" means a support structure such as a pole or narrow metal framework which is held erect by the use of guy wires and anchors.
3. "Monopole" means a support structure that consists of a single steel or wood pole sunk into the ground and/or attached to a concrete pad.
4. "Existing nonresidential structure" means existing structures identified in this Ordinance to which wireless facility components may be attached with certain mitigating conditions.

P. "Wireless Communication Facility" means a Wireless Communication Facility, including a microcell, that is a facility for the transmission and/or reception of radio (television) frequency signals, and which may include antennas, equipment shelter or cabinet, transmission cables, a support structure to achieve the necessary elevation, and reception and transmission devices and antennas.

Q. "Small Wireless Facility" means a small wireless facility or micro wireless facility defined within and subject to Article 21, Section 21-500A.

21-500.3 Exemptions

The following are exempt from the provisions of this Ordinance and shall be permitted in all zones:

- A. Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC;
- B. Antennas and related equipment not more than three (3) feet in height that are being stored, shipped, or displayed for sale;
- C. Facilities used for purposes of public safety, such as, but not limited to, police and the regional 911 system;
- D. Wireless radio utilized for temporary emergency communications in the event of a disaster;
- E. Licensed amateur (ham) radio stations not greater than 75-feet in total height including any support or other existing structure.
- F. Wireless Data Communications antenna for Internet single end user (i.e. consumer) not greater than 75-feet in total height including any support or other existing structure.
- G. Satellite dish antennas one meter in diameter or less, including direct to home satellite services, when used as a secondary use of the property in all zoning districts, except within business and industrial districts satellite dish antennas two meters in diameter or less;
- H. Freestanding residential television or private radio reception antenna stations not exceeding 60-feet in height or residential television or private radio reception antennas mounted on existing residential structures not more than 60-feet in height including the height of the roof line of the structures.

- I. Wireless Communication Facilities which legally existed prior to August 7, 2000; except that this exemption does not apply to modifications of such existing facilities;
- J. Maintenance or repair of a Wireless Communication Facility and related equipment, (excluding structural work or changes in height or dimensions of antennas, towers, or buildings) provided that compliance with the standards of this Ordinance are maintained; and

21-500.4 General Provisions

- A. Principal or Accessory Use. A Wireless Communication Facility will be considered either principal or accessory uses. A different use of an existing structure on the same lot shall not preclude the installation of a Wireless Communication Facility on that lot except as specifically provided within this Ordinance.
- B. Not Essential Services. Wireless telecommunications facilities are not considered essential public facilities and shall not be regulated or permitted as essential public facilities.
- C. FCC Licensing. The applicant must demonstrate that it is licensed by the FCC if it is required to be licensed under FCC regulations. The applicant if not the telecommunications service provider shall submit proof of lease agreements with an FCC licensed telecommunications provider if they are required to be licensed by the FCC.
- D. Lot Size. For purposes of determining whether the installation of a wireless telecommunications facility complies with zoning and development standards, such as, but not limited to, setback and lot coverage requirements, only the dimensions of the parcel upon which the wireless telecommunications facility is located shall be considered. If the Wireless Communication Facility is located upon a leased parcel of a larger lot, then only the leased area shall be considered.
- E. Signs. No wireless telecommunications equipment shall be used for the purpose of mounting signs or message displays of any kind.
- F. Lighting. Wireless Communication Facilities shall not be artificially lighted unless required by the FAA or other applicable authority.
- G. Permanent Mounting Required. All commercial wireless telecommunications facilities shall be installed, erected, or mounted in a manner that is intended to be permanent. Temporary and mobile commercial facilities are not allowed except for testing purposes, or emergency or display purposes not to exceed a 24-hour period except with the written permission of the Chief Building Inspector of the City, which permission shall be granted only upon good cause not within the control of the permittee.
- H. Cumulative Effects. The City shall consider the cumulative visual effects of Wireless Communication Facilities mounted on existing structures and/or located on a given permitted site in determining whether the additional administrative approval can be granted so as to not adversely affect the visual character of the City.
- I. Change of Ownership Notification. Upon transfer of ownership of any Wireless Communication Facility or the lot or parcel upon which such facility has been erected the owner of the Wireless Communication Facility shall notify in writing the City of Mt. Vernon, Building Inspector, within thirty (30) days of the transfer. No transfer of ownership shall release said owner-transferor from the owner's existing obligations under this Ordinance; in addition, all transfers of ownership in whole or part shall obligate and subject the new owner-transferee to any

obligations of the transferor existing under this Ordinance at time of transfer.

21-500.5 Wireless Communication Facility Locations

A. Freestanding. Freestanding Wireless Communication Facilities may be located in the following Agriculture, Flood Plain, Business or Industrial zoning districts subject to administrative approval at the following heights; provided in all cases a Conditional Use Permit must be obtained in accordance with Article 21, Section 21-113 of the Revised Code of Ordinances:

1. A-G, General Agriculture District and F-P, Flood Plain District: 200 feet. I-1, Light Industrial District, 1-2, General Industrial District, and I-A, Industrial-Agriculture District: 200 feet.
2. B-2, Secondary Business District, B-3, and Interchange Business District: 120 feet.

No freestanding Wireless Communication Facility shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the City that no existing Wireless Communication Facility, freestanding or located on existing structures, nor any available structure can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate that no existing Wireless Communication Facility or structure can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing Wireless Communication Facility or structures are located within the geographic area required to meet applicant's engineering requirements.
2. Existing Wireless Communication Facility or structures are not sufficient height to meet applicant's engineering requirements.
3. Existing Wireless Communication Facility or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
4. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing Wireless Communication Facility or structures, or the antenna on the existing Wireless Communication Facility or structures would cause interference with the applicant's proposed antenna.
5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure to adapt an existing Wireless Communication Facility or to use an existing structure for sharing or use are unreasonable. Costs exceeding new Wireless Communication Facility development are presumed to be unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing Wireless Communication Facility and structures unsuitable.

B. Existing Structures. Wireless Communication Facilities may be placed in any zoning district on the following existing structures subject to administrative approval of the facility. No Conditional Use Permit is required. The height of the wireless facility must not exceed the height requirements of Section 21-500.6 B herein:

1. Any free standing support structure currently used by a permitted Wireless Communication Facility;
2. Non-residential buildings including, but not limited to, office buildings, retail buildings, industrial

buildings, and clubhouses; but not including structures considered accessory structures to a residential use; and

3. Minor facilities located on non-residential buildings and structures including, but not limited to, water towers, government buildings, churches, light standards in parking lots and sports fields, bridges, power poles and towers, and flag poles.

C. Rights-of-Way. Subject to administrative approval, Wireless Communication Facilities may be placed in the public right-of-way or utility right-of-way provided the Wireless Communication Facility is a microcell consisting of a whip or tubular antenna placed on a light standard or power pole and the equipment cabinet is placed in the ground; provided the written agreement of the right-of-way owner is first obtained and the right-of-way permits same. No such pole and microcell shall have a combined height which exceeds 40 feet; no minimum setback requirement shall be required for the antenna.

D. Residential Districts. Except as provided in subsection B above, Wireless Communication Facilities are not permitted in any residential district.

21-500.6 Site Development Standards

All Wireless Communication Facilities shall be constructed, erected or built in accordance with the following site development standards:

A. Wireless Communication Facilities shall be screened or camouflaged by employing the best available technology. This may be accomplished by use of compatible materials, location, color, stealth technologies, and/or other tactics to achieve minimum visibility of the facility as viewed from public streets or residential properties. All screening and camouflaging is subject to the approval of the City when possible facilities should be camouflaged to resemble trees.

B. Wireless Communication Facilities may be mounted on certain nonresidential buildings and structures in accordance with the limitations in Section 21-500.5 B with administrative approval, provided that the following conditions are met:

1. The Wireless Communication Facility is co-located on an existing wireless communication facility and conforms to Section 21-500.5 A; or

2. The Wireless Communication Facility consists of a microcell or a minor facility as follows:

a. The combined antenna(e) and supporting hardware shall not extend more than 15 feet above the existing or proposed roof structure. Antenna(e) may be mounted to rooftop appurtenances provided they do not extend beyond 15 feet above the roof proper; and

b. The antenna(e) and supporting hardware shall be mounted on the building upon which they are located and designed to minimize visual and aesthetic impacts to surrounding land uses and structures and shall, to the greatest extent practical, blend into the existing environment.

c. The minimum setback in each direction from the edge of the building or structure shall be one

and one-half feet of setback for each foot of combined antenna and supporting hardware height, which minimum setback shall not be subject to variance.

C. Freestanding Wireless Communication Facilities shall conform to all of the following site development standards:

1. Monopoles shall be the only freestanding support structures allowed in the City; no lattice towers or guy towers shall be permitted;
2. Installation of a freestanding facility shall be denied if placement of the antennae on an existing structure can meet the applicant's technical and network location requirements;
3. The applicant shall demonstrate that the Wireless Communication Facility is the minimum height required to function satisfactorily. No freestanding facility that is taller than the maximum allowed height shall be approved. Height shall be measured to the top of the antenna(e);
4. A freestanding Wireless Communication Facility, including the support structure and associated electronic equipment, shall have a minimum setback requirement from all adjoining property lines equal to one foot of setback for each foot of height; except, however, when on a parcel adjacent to a residential use or adjacent to a lot zoned residential, then the minimum setback from the property line(s) of the adjacent residential use or lot shall be one and one-half feet of setback for each foot of height. Minimum setback requirements shall not be subject to variance;
5. Freestanding Wireless Communication Facilities shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to:
 - a. Use existing site features to screen as much of the total facility as possible from prevalent views; and/or
 - b. Use existing site features as a background so that the total facility blends into the background with increased sight distances;
6. In reviewing the proposed placement of a wireless facility on the site and any associated landscaping, the City may make a condition of the permit that the applicant supplement existing trees and mature vegetation to more effectively screen the facility; and
7. Support structures, antennae, and any associated hardware shall be painted a nonreflective color or color scheme appropriate to the background against which the facility would be viewed from a majority of points within its viewshed. A proposed color or color scheme shall be approved by the City.
8. Separation distances between freestanding Wireless Communication Facilities is required and shall be measured between the proposed Wireless Communication Facility and those Wireless Communication Facilities that are existing, or have received approval on the effective date of this Ordinance from any governmental entity, regardless of whether situated within or outside the corporate limits of the City. The separation distances shall be measured by drawing or following a straight line between the base of the existing Wireless Communication Facility and the proposed base, pursuant to a site plan of the proposed Wireless Communication Facility. No freestanding Wireless Communication Facility shall be erected within

1500 feet of another freestanding Wireless Communication Facility.

D. Electronics equipment enclosures shall conform to the following:

1. Screening of Wireless Communication Facility equipment enclosures shall be provided with one or a combination of the following: underground, fencing, walls, landscaping, structures, or topography which will block the view of the equipment shelter as much as practicable from any street and/or adjacent properties. Screening may be located anywhere between the enclosure and the above mentioned viewpoints. Landscaping for the purposes of screening shall be maintained in a healthy condition; and
2. No wireless equipment reviewed under this section shall be located within required building setback areas.

E. Security fencing, if used, shall conform to the following:

1. No fence shall exceed eight (8) feet in height or be less than six (6) feet in height;
2. Security fencing shall be effectively screened from view through the use of appropriate landscaping materials; and
3. Chain-link fences shall be painted or coated with a nonreflective color, and shall have a minimum three (3) foot deep area to be planted with approved plant species in a manner that will completely screen the fencing.

21-500.7 Co-location

The intent of co-location is to encourage several providers to use the same structure or site to keep the number of Wireless Communication Facilities sites to a minimum as a means of reducing the overall visual effects throughout the community. The following procedures are required to further the intent of Wireless Communication Facility co-location:

- A. A permittee shall cooperate with other Wireless Communication Facility providers in co-locating additional antennae on support structures and/or on existing buildings and sites provided said proposed co-locatees have received a permit for such use at said site from the City. A permittee shall allow other providers to co-locate and share the permitted site, provided such shared use does not give rise to a substantial technical level impairment of the permitted use (as opposed to a competitive conflict or financial burden).
- B. A signed statement indicating that the applicant agrees to allow for the potential co-location of additional Wireless Communication Facility equipment by other providers on the applicant's structure or within the same site location shall be submitted by the applicant as part of the permit application. If an applicant contends that future co-location is not possible on its site, the applicant must submit a technical study documenting that such co-location is not possible.

21-500.8 Facility Removal

In instances where a Wireless Communication Facility is to be removed, the removal shall be in accordance

with the following procedures:

- A. The operator of a Wireless Communication Facility shall notify the City upon the discontinued use of a particular facility. The Wireless Communication Facility shall be removed by the facility owner within ninety (90) days of the date the site's use is discontinued, it ceases to be operational, the permit is revoked, or if the facility falls into disrepair or is abandoned. Disrepair includes structural features, paint, landscaping, or general lack of maintenance which could result in safety or visual impacts; and
- B. If the provider fails to remove the facility upon ninety (90) days of its discontinued use or abandonment or disrepair, the responsibility for removal falls upon the landowner on which the facility has been located. If any facility is not removed within said ninety (90) days same shall constitute a nuisance and shall be subject to removal by the City in accordance with Article 13, Section 13.11 of the Revised Code of Ordinances.

21-500.9 Electromagnetic Field (EMF) Standards Compliance

All Wireless Communication Facilities shall be operated in compliance with the following standards:

A. The applicant shall comply with Federal standards for EMF emissions. Within six (6) months after the issuance of its operational permit, the applicant shall submit a project implementation report which provides cumulative field measurements of radio frequency (EMF) power densities of all antennas installed at the subject site. The report shall quantify the EMF emissions and compare the results with established Federal standards. Said report shall be subject to review and approval by the City for established Federal standards. Said report shall be subject to review and approval by the City for consistency with the project proposal report and the adopted Federal standards. If on review the City finds that the Wireless Communication Facility does not meet Federal standards, the City may revoke or modify the permit. The applicant shall be given a reasonable time based on the nature of the problem to comply with the Federal standards. If the permit is revoked, then the facility shall be removed pursuant to Section 21-500.8.

If said Federal standards are met, no administrative approval or conditional use may be denied on grounds that radio frequency admissions are harmful to the environment or to the health of residents.

B. The applicant shall ensure that the Wireless Communication Facility will not cause localized interference with the reception of area television or radio or data broadcasts. If on review of a registered complaint the City finds that the Wireless Communication Facility interferes with such reception, the City may revoke or modify the permit. The applicant shall be given a reasonable time based on the nature of the problem to correct the interference. If the permit is revoked, then the facility shall be removed pursuant to Section 21-500.8.

21-500.10 Application Requirements

Applications for administrative approval and/or Conditional Use Permit shall be in the form prescribed by the City of Mt. Vernon and shall include such information as required for all such permits and shall also include the information described below. The Chief Building Inspector shall issue a Building Permit when an application for administrative approval has been deemed to be complete. The City Council shall make final determination with regard to Conditional Use Permits. Applications shall be processed in accordance with the City's ordinances and regulations as presently constituted or hereafter amended. Application for a Wireless Communication Facility shall contain the following information. In addition to the information required within other Articles or provisions of the Revised Code of Ordinances, the Applicant must provide any combination of site plans, maps, surveys, technical reports, or written narratives that operate to convey all of the following information:

- A. Photo simulations of the proposed facility as viewed from affected residential properties and public rights-of-way at varying distances;
- B. A signed statement indicating that (1) the applicant and landowner agree they will diligently negotiate in good faith to facilitate co-location of additional Wireless Communication facilities by other providers on the applicant's structure or within the same site location and (ii) the applicant and/or landlord agree to remove the facility within ninety (90) days after abandonment;
- C. Copies of any environmental documents required by any federal agency, if applicable. These shall include the environmental assessment required by FCC Para. 1.1307, or in the event that a FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment;
- D. A full site plan shall be required for all sites, showing the tower, antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this Ordinance. The site plan shall clearly indicate the location, the specific placement of the facility on the site, the type and height of the proposed Wireless Communication Facility, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed facility, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, fencing, proposed color(s), and other proposed structures. The site plan shall not be required if the antenna is to be mounted on an existing structure;
- E. A current map showing the location and service area of the proposed Wireless Communication Facility, and a map showing the locations and service areas of other Wireless Communication Facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the City;
- F. A legal description of the parcel, if applicable;
- G. The approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;
- H. The method of fencing, the finished color, and, if applicable, the method of camouflage and illumination, if required;
- I. A letter signed by the applicant stating the Wireless Communication Facility will comply with all FAA regulations and EIA (Electronic Industries Association) Standards and all other applicable federal, state and local laws and regulations;
- J. A statement by the applicant as to whether construction of the Wireless Communication Facility will accommodate co-location of additional antennas for future users;
- K. Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions.
- L. An inventory of its existing towers that are either within the jurisdiction of the City of Mt. Vernon or within 1/2 miles of the border thereof, including specific information about the location, height, and design of each tower. The City may share such information with other applicants applying for administrative

approvals or Conditional Use Permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the City; provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

M. At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the City. This shall include a service area coverage chart for the proposed facility that depicts the extent of coverage and corresponding signal quality at the proposed facility height and at least one height lower than that proposed.

21-500.11 Permit Limitations

Construction of a Wireless Communication Facility shall commence within one (1) year from the date of the City's approval, which approval shall be the earlier of date of issuance of a Building Permit or granting of a Conditional Use. If not used within one year, the applicable permit shall become null and void.

21-500.12 Fees

In Addition to any other applicable fees, prior to administrative approval, the applicant shall reimburse the City for costs of professional engineers and other consultants hired by the City to review and inspect the applicant's proposal. By way of illustration and not limitation, these professional services may include engineering and technical review, legal review, planning review, Hearing Examiner services, environmental review, critical areas review, financial and accounting review, soils review, and mechanical and structural engineering review.

21-500.13 Rules and Regulations of the City

Nothing in this Ordinance shall operate to restrict or limit the City's ability to adopt and enforce all appropriate ordinances requirements for telecommunications carriers' and provider's use of the rights-of-way and public property, procedures for application and approval of telecommunication business registrations, telecommunications rights-of-way use authorizations, franchises and facilities leases, and describing violations and establishing penalties. Nothing in this Ordinance shall operate to release in whole or in part any applicant for a Wireless Communication Facility from the obligation to comply with such ordinances, rules and regulations of the City of Mt. Vernon.

21-500.14 Severability

If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

21-500A SMALL WIRELESS FACILITIES DEPLOYMENT ORDINANCE PROVIDING FOR THE REGULATION OF AND APPLICATION FOR SMALL WIRELESS FACILITIES

Preamble:

WHEREAS, the Illinois General Assembly enacted Public Act 100-0585, known as the Small Wireless Facilities Deployment Act (50 ILCS 835), having an effective date of June 1, 2018; and

WHEREAS, the City of Mount Vernon, Illinois (the City) is an Illinois municipality in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the City is authorized, under existing State and federal law, to enact appropriate regulations and restrictions relative to small wireless facilities, distributed antenna systems and other personal wireless telecommunication facility installations in the public right-of-way as long as it does not conflict with State and federal law; and

WHEREAS, the Illinois Small Wireless Facilities Deployment Act preempts home rule authority and sets forth the requirements for the collocation of small wireless facilities by local authorities; and

WHEREAS, this Section 21-500A implements the requirements of the Illinois Small Wireless Facilities Deployment Act.

Section 1. Purpose and Scope.

Purpose. The purpose of this Ordinance is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the City's jurisdiction, or outside the rights-of-way on property zoned by the City exclusively for commercial or industrial use, in a manner that is consistent with the Illinois Small Wireless Facilities Deployment Act.

Conflicts with Other Ordinances. This Ordinance supersedes all Ordinances or parts of Ordinances adopted prior hereto that are in conflict herewith, but only to the extent of such conflict.

Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Ordinance, the wireless provider shall comply with the requirements of this Ordinance to the maximum extent possible without violating federal or State laws or regulations.

Section 2. Definitions.

For the purposes of this Ordinance, the following terms shall have the following meanings:

Antenna – communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes – uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

Applicant – any person who submits an application and is a wireless provider.

Application – a request submitted by an applicant to the City for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

Collocate or collocation – to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications service – cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.

Communications service provider – a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

FCC – the Federal Communications Commission of the United States.

Fee – a one-time charge.

Historic district or historic landmark – a building, property, or site, or group of buildings, properties, or sites that are either (i) 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 through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the City pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

Law – a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro wireless facility – a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Municipal utility pole – a utility pole owned or operated by the City in public rights-of-way.

Permit – a written authorization required by the City to perform an action or initiate, continue, or complete a project.

Person – an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public safety agency – the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

Rate – a recurring charge.

Right-of-way – the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include City-owned aerial lines.

Small wireless facility – a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

Utility pole – a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

Wireless facility – equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or

coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

Wireless infrastructure provider – any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

Wireless provider – a wireless infrastructure provider or a wireless services provider.

Wireless services – any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

Wireless services provider – a person who provides wireless services.

Wireless support structure – a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

Section 3. Regulation of Small Wireless Facilities.

Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in paragraph (9) regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

Permit Required. An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

- (1) Application Requirements. A wireless provider shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
 - a. Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - b. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;

- c. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
- d. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- e. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- f. Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
- g. In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

(2) Application Process. The City shall process applications as follows:

- a. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
- b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within 90 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Ordinance.

- c. An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 120 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Ordinance.

- d. The City shall deny an application which does not meet the requirements of this Ordinance.

If the City determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

The City shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the City denies an application.

The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period.

The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- e. Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a Master Pole Attachment Agreement, provided by the City for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the City

and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

- (3) Completeness of Application. Within 30 days after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 30 days after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City.

Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

- (4) Tolling. The time period for applications may be further tolled by:

- a. An express written agreement by both the applicant and the City; or
- b. A local, State or federal disaster declaration or similar emergency that causes the delay.

- (5) Consolidated Applications. An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

- (6) Duration of Permits. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Ordinance.

If the Small Wireless Facilities Deployment Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.

- (7) Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the City by personal delivery at the City's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

Collocation Requirements and Conditions.

- (1) Public Safety Space Reservation. The City may reserve space on municipal utility poles for future public safety uses, for the City's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the City reasonably determines that the municipal utility pole cannot accommodate both uses.
- (2) Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contracts that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
- (3) No interference with public safety communication frequencies. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.
A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

- (4) The wireless provider shall not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.
However, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- (5) The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
- (6) The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a City ordinance, written policy adopted by the City, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.
- (7) Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocation small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the City, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- (8) Height Limitations. The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- a. 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
- b. 45 feet above ground level.

- (9) Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is

proposed for collocation, the applicant shall apply for a Variance in conformance with procedures, terms and conditions set forth in Article 21, Section 21-112.

- (10) Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- (11) Ground-mounted Equipment Spacing. The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.
- (12) Undergrounding Regulations. The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.
- (13) Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

Application Fees. Application fees are imposed as follows:

- (1) Applicant shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- (2) Applicant shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.

- (3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (4) The City shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - a. routine maintenance;
 - b. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection d. under the Section titled Application Requirements; or
 - c. the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
- (5) Wireless providers shall secure a permit from the City to work within rights-of-way for activities that affect traffic patterns or require lane closures.

Exceptions to Applicability. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:

- (1) property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
- (2) property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
- (3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Ordinance shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued

authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

Pre-Existing Agreements. Existing agreements between the City and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on City utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the City on the effective date of the Act may accept the rates, fees and terms that the City makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the City that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the City's utility poles pursuant to applications submitted to the City before the wireless provider provides such notice and exercises its option under this paragraph.

Annual Recurring Rate. A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) \$200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the City utility pole.

If the City has not billed the wireless provider actual and direct costs, the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the City notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

Section 4. Dispute Resolution.

The Circuit Court of Jefferson County, Illinois shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than \$200 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

Section 5. Indemnification.

A wireless provider shall indemnify and hold the City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the City improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

Section 6. Insurance.

The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (i) property insurance for its property's replacement cost against all risks;
- (ii) workers' compensation insurance, as required by law;

OR

(iii) commercial general liability insurance with respect to its activities on the City improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of City improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City.

Section 7. Severability.

If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

21-600**REGULATIONS FOR BED AND BREAKFAST ESTABLISHMENT**

21- 600.1 A Bed and Breakfast Establishment may be allowed as a Conditional Use in the R-1, Low Density Residential District; R-2, Medium Density Residential District; R-M2, Medium Density Residential District and Mobile Home; R-3, High Density Residential District.

21-600.2 A Bed and Breakfast Establishment shall at all times comply with the regulations set forth herein.

21-600.3 A Bed and Breakfast Establishment shall be located within a single-family residence and shall maintain the appearance of a single-family residence. No mobile home shall be used as a Bed and Breakfast Establishment.

21-600.4 No expansion of the residence shall be allowed to accommodate a Bed and Breakfast Establishment and all guest rooms shall be located in the principal residential structure on the lot.

21-600.5 Not more than fifty percent of the floor area of the residence nor more than five bedrooms shall be devoted to rooms rented as overnight accommodations; each bedroom shall serve no more than two guests.

21-600.6 A Bed and Breakfast Establishment shall be an operator-occupied residence at all times a guest is registered. "Operator" shall mean the owner of the Bed and Breakfast Establishment or the owner's agent who is required by this Ordinance to reside in the Bed and Breakfast Establishment or upon contiguous property.

21-600.7 The operator of a Bed and Breakfast Establishment shall maintain a guest register including names, addresses and dates of occupancy; such register shall be open to inspection by the appropriate City officials.

21-600.8 Meals served by a Bed and Breakfast Establishment shall only include breakfast and shall only be served to overnight guests. A Bed and Breakfast Establishment which serves breakfast shall comply with the following minimum standards:

(1) Food shall be clean, wholesome, free from spillage, free from adulteration and misbranding and safe for human consumption. Containers of food shall be stored above the floor, on clean racks, shelves or other clean surfaces in such a manner as to be protected from splash or other contamination. Milk of only pasteurized Grade A may be used. Use of home canned food is prohibited except for jams and jellies.

(2) Food shall be protected from contamination while being stored, prepared, and served, and during transportation. Perishable foods shall be stored at temperatures that will protect them against spoilage. Potentially hazardous food shall be maintained at safe temperatures of 45 degrees F. or below, or 140 degrees F. or above, as appropriate, except during necessary periods of preparation and serving. Frozen food shall be kept at temperatures that will keep it frozen, except when being thawed for preparation. Potentially hazardous frozen food shall be thawed at refrigeration temperatures or below, quick thawed as part of the cooking process, or thawed by another method approved by the local Health

Department. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, and pork products shall be cooked to heat all parts of the food at least 165 degrees F. before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs and other potentially hazardous prepared food, shall be prepared from chilled products with a minimum of manual contact. Portions of food once served to an individual may not be served again. Laundry facilities shall be separated from food preparation areas. Live animals shall be excluded from food preparation areas.

(3) No person knowingly infected with a communicable disease that may be transmitted by food handling may work in a Bed and Breakfast Establishment.

(4) If the Bed or Breakfast operator suspects that any employee, family member or the operator himself or herself has a communicable disease, the operator shall notify the local Health Department immediately.

(5) All operators shall be certified. Certification shall be achieved by successfully completing an examination offered by the local Health Department as described in the current edition of the State of Illinois Food Service Sanitation Rules and Regulations.

(6) Persons preparing or serving food or washing utensils shall wear clean outer garments and maintain a high degree of personal cleanliness. They shall wash their hands thoroughly before starting work and as often as necessary while working to remove soil and contaminants. After visiting a toilet room, persons shall wash their hands thoroughly in a lavatory but never in the kitchen sink.

(7) No one, while preparing or serving food, may use tobacco in any form.

(8) Utensils shall be kept clean and in good repair.

(9) Multiuse eating and drinking utensils shall be thoroughly cleaned after each use. Facilities needed for the operations of washing, rinsing and sanitizing shall be provided.

(10) Pots, pans and other utensils used in the preparation or serving of food or drink and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non -food contact surfaces of equipment shall be cleaned at intervals that will keep them in a clean and sanitary condition.

(11) Residential sinks and home -style mechanical dishwashing machines are acceptable facilities for washing multi -use eating and drinking utensils. Utensils shall be air dried.

(12) Immediately following either manual or mechanical washing of eating or drinking utensils, and pots, pans and other cooking utensils, these utensils shall be effectively sanitized by being submerged in a hypochlorite solution with a chlorine concentration continuously maintained in one hundred parts per million, or another approved sanitizing solution which shall be used at the concentration tested and approved by the local Health Department. Dishpans may be used to accomplish the final sanitizing rinse.

(13)The reuse of single -service utensils is prohibited.

21-600.9 A Bed and Breakfast Establishment shall comply with all Building Codes, Fire Codes, and other Codes of the City of Mt. Vernon; in addition, a Bed and Breakfast Establishment shall meet the following requirements:

(a) Manual extinguishing equipment shall be provided on each floor in accordance with NFPA 10 - Standards for the Installation of Portable Fire Extinguishers.

(b) All combustibles or flammable liquids shall be stored in approved metal containers. No combustible storage in or under stairways.

(c) All trash containers shall be metal.

(d) No cooking facilities nor storage facilities shall be permitted in guest rooms.

(e) All hallways and stairways shall be adequately lighted.

(f) No portable heating devices shall be permitted in guest rooms.

(g) The operator shall submit a floor plan of the Bed and Breakfast Establishment to the Fire Department of the City of Mt. Vernon; in addition if the Bed and Breakfast Establishment is not situated within the corporate limits of the City, the floor plan shall also be submitted to the Jefferson Fire Protection District.

(h) Smoke detectors shall be provided in each guest room.

21-600.10 No guest shall remain in a Bed and Breakfast Establishment for more than fourteen consecutive days and no guest shall reside within the Bed and Breakfast Establishment for more than a total of sixty days in any calendar year.

21-600.11 There shall be one off-street parking space provided on the lot for each bedroom for rent, in addition to the parking requirements for a single-family residence in the applicable Land Use District. Off street parking shall not be met by parking within any required front yard.

21-600.12 There shall be no change in the outside appearance of the residence or premises nor other visible evidence of the conduct of a Bed and Breakfast Establishment other than one sign, not exceeding two square foot in area, non-illuminated and mounted flat against the wall of the residence, or one free standing, non-illuminated sign not exceeding two square feet in area, mounted on a single pole or lamppost, not exceeding eight feet in height.

21-600.13 There shall be no retail sales in connection with a Bed and Breakfast Establishment nor any commercial activity conducted other than a Bed and Breakfast Establishment. No Bed and Breakfast Establishment shall sell or serve alcoholic liquor upon its premises.

21-600.14 A Bed and Breakfast Establishment shall maintain liability insurance to protect its guests and others at all times that the residence is operated, maintained, or advertised as a Bed and Breakfast Establishment.

21-600.15 A Bed and Breakfast Establishment shall be subject to all hotel taxes imposed by the State of Illinois or the City of Mt. Vernon.

21-600.16 Bed and Breakfast Establishment shall be subject to additional reasonable requirements necessary to protect the public health, safety and general welfare as determined by the City Council of the City of Mt. Vernon.