

PH
7/3/2019
5:42pm

BOARD OF ALDERMAN
WORK SESSION AGENDA
CITY HALL, 345 S. MAIN, BOLIVAR, MO 65613
Tuesday, July 9th, 2019 at 6:30 p.m.

ROLL CALL

PLEDGE OF ALLEGIANCE

MOTION TO ADOPT AGENDA

**MAYORAL APPOINTMENT, Introductions, Presentations, Resolutions and Proclamations,
Citizens Requests:**

1. Discuss & Approve: Airport Hay Cutting June Date Extension.
2. Discuss & Approve: KLIFE Kickoff Klub August 22nd, 2019 Special Event Application.
Discussion: Stop Signs at 3 locations: South Stop Sign at N. Oakland/W. Locust; South Stop Sign at S. Oakland/Woodland; West and East Stop Signs at W. Buffalo/S. Missouri.
3. Discuss: Options for Doors for Restrooms at YMCA.
4. Discuss & Approve: Capital Expense Eligible ~ 2016 Police Interceptor SUV and Equipment.
5. Update: Budget Note Changes ~ To change from Claud Drainage Expense to Albany Drainage Expense.
6. Discuss & Approve: Frisco Senior Village, LP Development Agreement.
7. Discuss & Approve: Zoning Change Application for 911 W. Broadway.
8. Bill No. 2019-37: An Ordinance Changing the Zoning Classification for 911 W. Broadway.
9. Bill No. 2019-38: An Ordinance Amending Chapter 525 Bolivar Code Related to Small Wireless Facility Deployment.
10. Bill No. 2019-39: An Ordinance Amending Chapter 520 Code Related to Regulations for Right-of-Way Manag.
11. Bill No. 2019-40: An Ordinance Amending Chapter 410 Bolivar Code Related to Communications Antennas & Support Structures.
12. Bill No. 2019-41: An Ordinance Amending Chapter 225.580 Regarding the City's Burn Regulations.
13. Bill No. 2019-42: An Ordinance Amending the City Code by Amending the City's Zoning Regulations through Addition of a New Code Section 410.255; Regarding Cultivation, Manufacture and Sale of Medicinal Marijuana.
14. Update: Variance with EPA update from HDR Engineering and Robert Brundage, Newman, Comley and Ruth P.C.

Executive Session:

RSMo 610.021(1) Legal Actions, Cause of Action, or litigation involving a public governmental body and Any confidential or privileged communications between a public governmental body or its representatives and its attorney. **RSMo 610.021(2)** Leasing, Purchase or Sale of Real Estate by a public governmental body where Public knowledge of the transaction might adversely affect the legal consideration therefor. **RSMo 610.021(13)** Individually Identifiable Personnel Records, performance ratings or records pertaining to employees or applicants for employment..

#wherelibertyflows

If you have a need for special accommodations,
Please contact the City Clerk's office 24 hours prior to the meeting.



**CALL OF A WORK SESSION MEETING
OF THE CITY OF BOLIVAR BOARD OF ALDERMEN.**

I, Christopher Warwick, Mayor of the City of Bolivar, Missouri, do hereby call a Work Session Meeting of the Bolivar Board of Aldermen on Tuesday July 9th, 2019, at 6:30 p.m. for the purpose of transacting any lawful business that might be brought before said Council at said meeting.



Christopher Warwick, Mayor

ATTEST: 


Paula Henderson, City Clerk

Posted: 7/3/2019
5:42pm

SPECIAL EVENT APPLICATION

APPLICANT AND ORGANIZATION INFORMATION

Sponsor Name: Polk County KLIFE
 Address: 424 S. Gillian St.
 City: Bohannon State: mo Zip: 65613
 Daytime phone: _____ Cell phone: 417.399.2136
 Fax: _____ Cell phone (during event): _____
 Email: ben.salmon@klife.com
 Preferred method of contact: email

EVENT INFORMATION

Event name: KLIFE KICKOFF Club
 Event location: Cribbs ~~Bohannon~~ Youth Park
 Date & time of Set up: Aug. 22 4:00 - 7:00 pm
 Date & time of Event: Aug. 22 7:00 - 8:30 pm
 Date & time of Clean up: 8:30 - 9:30 pm
 Anticipated number of attendees: 200-300

Will the event sponsor be present and in charge of the event at all times? ☒ Yes ☐ No
 If no, please provide name of responsible party present.

Name: Ben Salmon Cell phone (during event): 417.399.2136

Type of activities planned (check all that apply):

- ☐ Carnival ☐ Concert ☐ Festival
☐ Fireworks ☐ Parade ☐ Run/Walk
☐ Sporting Event ☒ Other (please explain) Hang out & worship

Will the following be served? (check all that apply) ☒ Food ☐ Alcohol ice cream
 If food is being served, a permit with the Polk County Health Center shall be obtained. Event sponsor will be responsible to monitor alcohol remains in defined event area.

Will temporary booths be set up? ☐ Yes ☒ No
 If yes, will goods be available for purchase? ☐ Yes ☒ No
 Sponsor is required to obtain a City business license for all vendors selling goods during the event.

Will event be open to the public? ☒ Yes ☐ No

- Will admission be charged? ☐ Yes ☒ No
- Will donations be accepted? ☐ Yes ☒ No
- Will electricity be required? ☒ Yes ☐ No
- Will generators be used? ☐ Yes ☒ No
- Will live music be performed? ☒ Yes ☐ No
- Will a stage be set up/constructed? ☐ Yes ☒ No

Please list performance times _____

- Will banners/signs be installed? ☐ Yes ☒ No

ALL signs require a sign permit issued by the Community Development Department. With the approval of the Special Events Permit, the organization is entitled to 2 cost-free sign permits. The cost-free permits still require a sign application and approval by the Community Development Department. All other signs require sign application submission, approval and permit charge.

- Is this an event for Charity? ☐ Yes ☒ No

List participating organizations/with name of contact (attach list if needed)

Organization: KLIFE Contact: Ben Salmon

Organization: _____ Contact: _____

Organization: _____ Contact: _____

Please indicate who is planned to provide the following services (for EMS, Fire, and security only check City provided if you want dedicated staffing at your event. This will incur additional charges):

Service	City provided	Self provided	Not Applicable
Crowd Control			
EMS Services			
Fire Watch			
Restroom Facilities			
Security			
Street Barricades			
Traffic Control			
Trash clean-up*			

*The City reserves the right to charge the event sponsor for clean-up provided by the City.

** We would kindly like to ask that fee be waived again. Thanks!*

In addition to the information provided above, please provide a detailed narrative description of the event. Also provide a map illustrating the locations of the activities planned and requested street barricades. (Except for very limited circumstances, the City will require that a street closing be from cross intersection to cross intersection so that no traffic can turn into closed street.) Please use additional sheets as needed.

This will be our 3rd time kicking off the school year at this wonderful park! We will be playing games, mingling, serving ice cream sundaes, and having a short worship service. This is a chance for the whole family to experience KLIFE.

I hereby agree that my organization will comply with all City, County and State regulations and those that are specific to public safety.

Signature: *Ben Salmon* Print: *Ben Salmon*
Organization Name: *KLIFE* Date: *6.21.19*

OFFICE USE ONLY

Date submitted: _____

Date scheduled to be presented to Council: _____

Emergency Management: _____ Date: _____

Community Development: _____ Date: _____

Building Inspector (if applicable): _____ Date: _____

Fire Chief: _____ Date: _____

Police Chief: _____ Date: _____

Public Works Director: _____ Date: _____

City Clerk: _____ Date: _____

Date presented to Council: _____

☐ Approved ☐ Rejected

Initials: _____

HOLD HARMLESS AGREEMENT

To the extent permitted by law, Sponsor agrees to indemnify, defend and hold harmless the City of Bolivar, its officers, agents, volunteers and employees from and against all suits, claims, damages, losses and expenses, including but not limited to attorney's fees, court costs or alternative dispute resolution costs arising out of, or related to, Sponsor's use of city streets, roads, parks, sidewalk or other facilities under this agreement involving an injury to a person or persons, whether bodily injury or other personal injury (including death), or involving an injury or damage to property (including loss of use or diminution in value), but only to the extent that such suits, claims, damages, losses or expenses are caused by the negligence or other wrongdoing of Sponsor, its officers, agents and volunteers, or anyone directly or indirectly employed or hired by Sponsor or anyone for whose acts Sponsor may be liable, regardless of whether caused in part by the negligence or wrongdoing of City and any of its agents or employees.

1. Sponsor shall purchase and maintain the following insurance, at Sponsor's expense:
 - Commercial General Liability Insurance with a minimum limit of \$1,000,000 each occurrence/\$2,000,000 general aggregate written on an occurrence basis
 - Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hire automobiles and other vehicles used by Sponsor with a combined single limit of \$1,000,000 per accident
2. All policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by the city.
3. Prior to using City's facilities or infrastructure under this agreement, Sponsor shall furnish the City with certificates of insurance evidencing the required coverage, conditions and limits required by this agreement, have the City named as an additional insured and provide the appropriate additional insured endorsements.
4. No provision of this agreement shall constitute a waiver of the City's right to assert a defense based on the doctrines of sovereign immunity, official immunity or any other immunity available under law.

Signature: Ben Salmen Print: Ben Salmen
Organization Name: KLIFE Date: 6-21-19
City of Bolivar Representative: Paula Henderson Date: 6-21-19

NOTICE OF OCCURRENCE/CLAIM FORM

CONTACT INFORMATION

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone: _____ Cell phone: _____

Email: _____

INCIDENT INFORMATION

Incident date: _____ Incident time: _____

Incident location: _____

Please provide a detailed description of incident: _____

PROPERTY DAMAGE

Vehicle/Equipment damaged

Year: _____ Make: _____ Model: _____

License plate number: _____

Operator

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Daytime phone: _____ Cell phone: _____

Email: _____

Building/Structure damaged: _____

Contents damaged: _____

Bolivar, MO



Legend

Sign

- <all other values>
- Parking
- Speed Limit
- Stop
- Traffic with Prohibition Signal
- Yellow Traffic
- Yield

Roads

- All Roads
- State Lettered Hwy
- State Numbered Hwy

- Parcel
- Corporate Limit Line



332.1 0 166.07 332.1 Feet



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THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Bolivar, MO



Legend

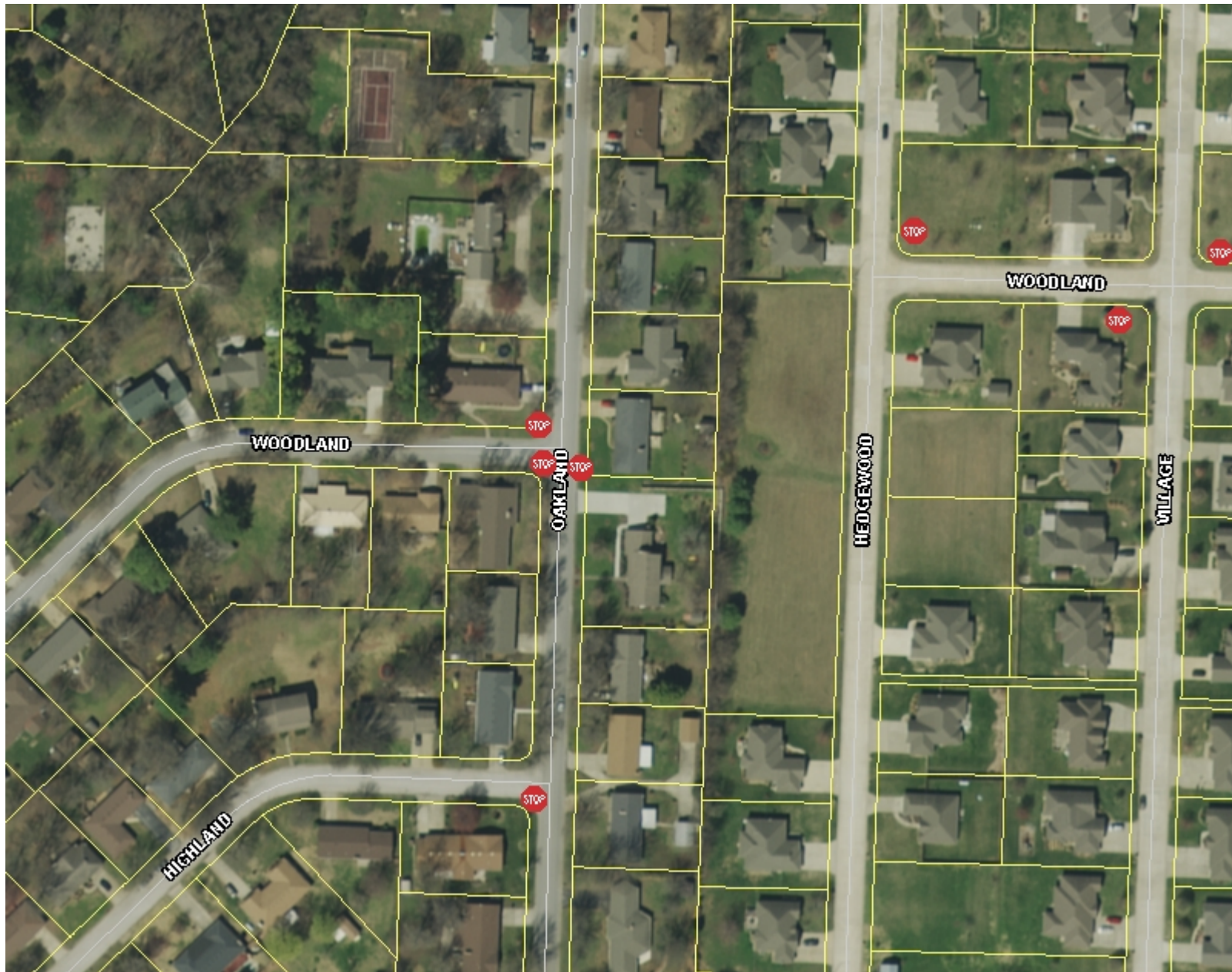
Sign

- <all other values>
- Parking
- Speed Limit
- Stop
- Traffic with Prohibition Signal
- Yellow Traffic
- Yield

Roads

- All Roads
- State Lettered Hwy
- State Numbered Hwy

- Parcel
- Corporate Limit Line



Notes

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Bolivar, MO



Legend

Sign

- <all other values>
- Parking
- Speed Limit
- Stop
- Traffic with Prohibition Signal
- Yellow Traffic
- Yield

Roads

- All Roads
- State Lettered Hwy
- State Numbered Hwy

- Parcel
- Corporate Limit Line



228.7 0 114.37 228.7 Feet



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Notes



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MILAR PRODUCTS

Folding Security Gate 5-1/2'W x 8'H

T9F968130



★★★★★ (3)

\$219.95

Folding Security Gate 6-1/2'W x 6-

T9F968138



★★★★★ (15)

\$184.95

Folding Security Gate 6-1/2'W x 8'H

T9F968142

★★★★★ (1)

Shop Categories

Help

Welcome Log In
Account Tools

(0)
Lists

All ▾

Return to Category List

Home

Material Handling

Dock & Truck Equipment

C



MORE



Click image to enlarge

prev See all 16 items in product family

Single Folding Security Gate 6-1/2'W x 8'H

Item #: T9F968138

Ships same day. ?

★★★★★ 15 reviews | Write a review

Price: \$ 184.95

PATTERSON CONSTRUCTION

123 E VIVIAN ST BOLIVAR MO

Date

May 28, 2019

To

City of Bolivar - YMCA

Instructions

Locker Room Doors

<i>Description</i>		<i>Total</i>
2 Steel split Jam Doors with a solid core oak door to match other doors in the building		
The doors will be a stained finish.		
The jams will be painted to customers choosing.		
There will be 1 double keyed dead bolt on each door.		
Both Doors will have to be cut to fit existing opening height. (Reason being – this will keep us from having to change any framing of the building)		
Material : 2 Doors, Dead Bolts, Door Handles, Stain, Paint and Hardware		\$ 2175.00
Labor : Cutting Doors and Jam to fit opening height, staining, painting, and Installation		\$ 1175.00
TOTAL		\$ 3350.00

Thank you for your business!

Tel: 417-343-7901

Email: davidpatterson80.dp@gmail.com

Web: davidpattersonconstruction.com



Still awaiting Quote
Est. 3-5k

Development Contract

This contract made and entered into as of this 27th day of June, 2019, by and between **Frisco Senior Village, LP**, hereinafter referred to as Developer, and the **CITY OF BOLIVAR, MISSOURI**, a municipal corporation, hereinafter referred to as City, WITNESSETH:

WHEREAS, Developer desires to develop a Subdivision on real estate now located within the corporate limits of the City of Bolivar, Missouri, said subdivision to be known as Frisco Senior Village Subdivision ("the Subdivision"), and

WHEREAS, as a condition to the approval of the Final Plat of the Subdivision the Developer has agreed to make certain infrastructure improvements at Developer's expense, and

WHEREAS, the City possesses the power to require Developer to post a Performance Bond as a condition to the approval of the Final Plat of said subdivision, but is agreeable to granting Developer the option of either posting such a bond, or to waive the filing of the Plat of the Subdivision (and the issuance of building permits therein) pending full completion and acceptance of the improvements to be made by Developer in said Subdivision; and

WHEREAS, the parties desire to set forth their agreements respecting such development in writing,

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. Developers shall bring to and install within the Subdivision, trunk, distribution and/or service lines, manholes, service connections, fittings and all other necessary improvements for water and sewer service, all of which shall be of the size, of the type, and in the location reflected on the preliminary and final plats of the Subdivision, the minutes of the Planning and Zoning Commission (including the tape recordings thereof), and the minutes of the Board of Aldermen (including the tape recordings thereof), all of which, considered together, shall reflect the final development plans as approved by the City, and all in accordance with construction standards of the City of Bolivar, Missouri. City agents shall have the right to enter upon the property of Developers at all reasonable times and intervals to inspect the work as it progresses. Upon the completion thereof, Developers shall notify the City of that fact so that City officers may inspect and observe testing of the same. Upon such completion in strict accordance with the provisions of this agreement, Developers shall dedicate the same, without cost, to the City, and City (except as otherwise provided in this paragraph) shall thereupon assume their upkeep and maintenance. Developers shall also assign to City upon request at any time after acceptance, all rights or causes of action that the Developers may have against any third parties for faulty workmanship or materials, or if Developers (either personally or through agents or employees) install the same, shall repair and correct any defects due to faulty workmanship for a period of one year after completion and acceptance.

2. Developers shall install within the Subdivision sidewalks in the location reflected by the preliminary and final plats of the Subdivision as filed with, and finally approved by, the Planning and Zoning Commission of the City, and by the Board of Aldermen, all as may be reflected by the official minutes of said bodies (including the tape recordings thereof), and in strict accordance with the specifications of the City building codes and regulations. City agents shall have access to the property of the Developers at all reasonable times and intervals to inspect the construction as it progresses, to take samples of the materials, and for such other purposes as its deems necessary or appropriate to assure compliance with the terms and provisions of this agreement, and the construction standards incorporated herein.

3. Developers shall install within the Subdivision storm water detention in the location reflected by the preliminary and final plats of the Subdivision as filed with, and finally approved by, the Planning and Zoning Commission of the City, and by the Board of Aldermen, all as may be reflected by the official minutes of said bodies (including the tape recordings thereof), and in strict accordance with the specifications of the City building codes and regulations. City agents shall have access to the property of the Developers at all reasonable times and intervals to inspect the construction as it progresses, to take samples of the materials, and for such other purposes as its deems necessary or appropriate to assure compliance with the terms and provisions of this agreement, and the construction standards incorporated herein.

4. The developments and improvements required by the preceding paragraphs shall be completed within one (1) year from the date of this Contract.

5. Unless Developer shall post a Performance Bond in accordance with the provisions which follow, the City shall not release the Final Plat of the Subdivision for recording, and the City's approval thereof shall be conditional, pending the completion, dedication and acceptance of the developments called for hereunder within the areas required above. Further, Developer shall not request, and if requested the City shall not be required to issue, any building permits for any houses, buildings or other improvements requiring building permits within the undeveloped parts of the subdivision. Upon completion, approval and acceptance by the City of all developments and improvements, City shall release the Final Plat of the Subdivision for recording, and Developer, and its successors and assigns, may apply for and receive building permits for the lots within the Subdivision. Developer acknowledges that the City's waiver of its right to require a Performance Bond constitutes good and sufficient consideration for the various agreements and representations of Developers under the terms of this Paragraph, including specifically its right to obtain recordable copy of the Final Plat, and its waiver of all rights to seek or receive building permits pending full compliance with the terms and provisions hereof.

6. Notwithstanding any of the foregoing provisions, if a Letter of Credit (LOC) is issued in conjunction with a Performance Bond; and further if the term for the LOC is initially less than the time for performance of the Developer's obligations (whether as stated herein or by extension,

if any, agreed upon by the parties); and further if it appears to the City that the LOC cannot or will not be renewed by the issuing party, then the City reserves the right to require the issuance of a new Performance Bond secured by a separate Surety (to be approved by the City) prior to the expiration of the LOC. In the event that the Developer fails to provide such new Performance Bond upon the demand of the City and with sufficient time to allow the City to collect on the LOC, then the City may accelerate the deadline for Developer's performance under this Agreement to five (5) days prior to the last date that the City can collect on the LOC; and the City may thereafter collect on the LOC as though the Developer has defaulted on this Agreement in the event that the Developer fails to complete its obligations under this Agreement prior to the accelerated deadline.

7. Notwithstanding the preceding provisions of this Contract, if Developer shall post a Performance Bond in an amount approved by the Director, and in form approved by the City Attorney, (which Bond shall be conditioned upon the Developer's completion of the improvements described herein, within the time limits hereby imposed), City's approval of the Final Plat shall become final; the Plat shall be released to the Developer for recording; and building permits may issue upon the Planning and Zoning Administrator receiving proper application therefor.

8. If Developer shall fail to comply with the terms and provisions hereof within the time allowed, or as may hereafter be extended in writing, or it shall reasonably appear to the City that Developers are unable or unwilling to complete the performance hereof in the manner, or within the time allowed, the City may, at its option, declare this agreement in default, and in addition to any other rights and remedies granted it for breach of this agreement, require Developers to post a good and sufficient performance bond to assure the completion of the improvements to be constructed by Developers under this agreement, and/or, upon its own motion, vacate the Plat, withdraw its approval thereof, or take such other actions as it deems necessary or appropriate to assure compliance with its Zoning and Subdivision Regulations, and to assure the protection of the health and welfare of its residents.

9. This agreement shall be binding upon the parties hereto, and upon the personal representatives, heirs, successors and assigns of Developers, and the successors and assigns of City.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this 27th day of June, 2019.

Frisco Senior Village, LP

Signature

Print Name and Title

CITY OF BOLIVAR

by_____
Mayor

Attest:_____
City Clerk

Bolivar, MO



Legend

Roads

- All Roads
- State Lettered Hwy
- State Numbered Hwy

Parcel

Corporate Limit Line

Zoning District

- Unknown
- A-L
- C-0
- C-1
- C-2
- C-3
- C-S
- I-1
- I-2
- R-1
- R-2
- R-3
- R-4
- P/S
- MHS
- MHD



580.0 0 289.98 580.0 Feet



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Notes

ORDINANCE COVER SHEET

Bill No. 2019-37

Ordinance No. _____

**“AN ORDINANCE CHANGING THE ZONING CLASSIFICATION FOR
CERTAIN PROPERTY GENERALLY LOCATED AT 911 W. BROADWAY IN
BOLIVAR, MO.”**

Filed for public inspection on _____.

First reading _____ In Full; _____ By Title on _____.

Second reading _____ In Full; _____ By Title on _____.

Vote by the Board of Aldermen on _____:

_____ **Aye;** _____ **Nay;** _____ **Abstain**

_____ **Approved by the Mayor on _____.**

_____ **Vetoed by the Mayor on _____.**

Board of Aldermen Vote to Override Veto on _____.

_____ **Aye;** _____ **Nay;** _____ **Abstain**

Bill Effective Date: _____.

**“AN ORDINANCE CHANGING THE ZONING CLASSIFICATION FOR
CERTAIN PROPERTY GENERALLY LOCATED AT 911 W. BROADWAY IN
BOLIVAR, MO.”**

Be it Ordained by the Board of Aldermen of the City of Bolivar, Missouri, as follows:

Section I: Upon the recommendation of the Planning and Zoning Commission of the City of Bolivar on June 20, 2019 to approve the zoning change application, after petition being filed by the record owners and duly held public hearing, the zoning classification for the following described property is hereby changed from “C-2,” General Commercial District to “C-O,” Office and Institution District:

Leonard Addition – 222 x 201 feet in the West part of Block 1, commonly referred to as 911 W. Broadway.

The owner of the property is DCBC, LLC.

Section II: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, Deputy City Clerk

CERTIFICATION

I, Paula Henderson, do hereby certify that I am the duly appointed and acting Deputy City Clerk for the City of Bolivar, Missouri; that the foregoing Ordinance No. _____ was adopted by the Board or Aldermen and thereafter approved by the Mayor and became effective on _____, 2019; and that said Ordinance remains in full force and effect, having never been altered, amended nor repealed.

Paula Henderson, Deputy City Clerk

ORDINANCE COVER SHEET

Bill No. 2019-38

Ordinance No. _____

**“AN ORDINANCE AMENDING THE CITY CODE FOR THE CITY OF BOLIVAR,
MISSOURI BY ADDING A NEW CHAPTER 525; REGARDING SMALL WIRELESS
FACILITY DEPLOYMENT.”**

Filed for public inspection on _____.

First reading _____ In Full; _____ By Title on _____.

Second reading _____ In Full; _____ By Title on _____.

Vote by the Board of Aldermen on _____:

_____ Aye; _____ Nay; _____ Abstain

_____ Approved by the Mayor on _____.

_____ Vetoed by the Mayor on _____.

Board of Aldermen Vote to Override Veto on _____.

_____ Aye; _____ Nay; _____ Abstain

Bill Effective Date: _____.

“AN ORDINANCE AMENDING THE CITY CODE FOR THE CITY OF BOLIVAR, MISSOURI BY ADDING A NEW CHAPTER 525; REGARDING SMALL WIRELESS FACILITY DEPLOYMENT.”

WHEREAS, various new state or federal statutes and regulations continue to be enacted, supplemented, promulgated, and amended regarding regulation of certain communications providers, services, and operations as they pertain to local Right-of-Way, zoning regulations, and other municipal authority; and

WHEREAS, the Missouri General Assembly has recently enacted another such law, the “Uniform Small Wireless Facility Deployment Act” §§ 67.5110 to 67.5121 RSMo., governing certain installations of wireless equipment, which has an effective date of January 1, 2019; and

WHEREAS, the Board of Aldermen (the “Board”) desires to continue at all times to ensure compliance with applicable law, and, therefore, finds it in the best interest of the public to update its telecommunication regulations; and

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

NOW, THEREFORE, Be it Ordained by the Board of Aldermen of the City of Bolivar, Missouri, as follows:

Section I: The Bolivar Municipal Code is hereby amended by adding a new Chapter 525 for the purpose of compliance with the Missouri Uniform Small Wireless Facility Deployment Act, with such new Chapter to read as follows:

“CHAPTER 525: SMALL WIRELESS FACILITY DEPLOYMENT

Section 525.010 Title and Intent.

A. Title and Statement of Purpose. This Chapter shall be known and may be cited as the "Small Wireless Facility Deployment Code", and it is intended to establish a uniform and consistent approach to handling requests for the deployment of small wireless facilities in the City, consistent with state and federal law including sections 67.5110 to 67.5121 RSMo (while in effect) and sections 67.1830 to 67.1846 RSMo. City Ordinances shall apply to small wireless deployments except to the extent inconsistent with this Chapter. This Ordinance shall apply to all Persons desiring to construct, operate, or maintain Small Wireless Facilities within the City.

B. *Applicability; preemption.* Notwithstanding any ordinance to the contrary, the procedures set forth in this Chapter shall be applicable to all Wireless Communications Facilities existing or installed, built or modified after the effective date of this Chapter to the fullest extent permitted by law. No provision of this Chapter shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this Chapter is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

Section 525.020 **Definitions.**

As used in this Chapter, the following terms shall mean:

- (1) "**Antenna**", communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;
- (2) "**Applicable codes**", uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or the City's amendments to such codes enacted to prevent physical property damage or reasonably foreseeable injury to persons to the extent not inconsistent with sections 67.5110 to 67.5121 RSMo (while in effect);
- (3) "**Applicant**", any person who submits an application and is a wireless provider;
- (4) "**Application**", a request submitted by an applicant to the City for a permit to collocate small wireless facilities on a utility pole or wireless support structure, or to approve the installation, modification, or replacement of a utility pole;
- (5) "**Authority**" or "**City**", Bolivar, Missouri;
- (6) "**Authority pole**" or "**City pole**", a utility pole owned, managed, or operated by or on behalf of the City, but such term shall not include municipal electric utility distribution poles;
- (7) "**Authority wireless support structure**", a wireless support structure owned, managed, or operated by or on behalf of the City;
- (8) "**Collocate**" or "**collocation**", to install, mount, maintain, modify, operate, or replace small wireless facilities on or immediately adjacent to a wireless support structure or utility pole, provided that the small wireless facility antenna is located on the wireless support structure or utility pole;
- (9) "**Communications facility**", the set of equipment and network components, including wires, cables, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51);

a provider of information service, as defined in 47 U.S.C. Section 153(24); or a wireless services provider; to provide communications services, including cable service, as defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); wireless communications service; or other one-way or two-way communications service;

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

(11) "**Decorative pole**", a City pole that is specially designed and placed for aesthetic purposes;

(12) "**Fee**", a one-time, nonrecurring charge;

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

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

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

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

(15) "**Permit**", a written authorization required by the City to perform an action or initiate, continue, or complete a project;

(16) "**Person**", an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including any government authority;

(17) "**Rate**", a recurring charge;

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

(19) "**Small wireless facility**", a wireless facility that meets both of the following qualifications:

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

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

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

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

(21) "**Utility pole**", a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities; provided, however, such term shall not include wireless support structures, electric transmission structures, or breakaway poles owned by the state highways and transportation commission;

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

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

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

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

(d) A wireline backhaul facility;

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

(24) **"Wireless provider"**, a wireless infrastructure provider or a wireless services provider;

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

(26) **"Wireless services provider"**, a person who provides wireless services;

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

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

Section 525.030 Deployment of Small Wireless Facilities and Associated Poles in Right-of-Way.

1. The provisions of this section shall only apply to activities of a wireless provider within the right-of-way to deploy small wireless facilities and associated utility poles.

2. Subject to the provisions of this section and sections 67.5110 to 67.5121 RSMo (while in effect), a wireless provider may, as a permitted use not subject to zoning review or approval, collocate small wireless facilities and install, maintain, modify, operate, and replace utility poles along, across, upon, and under the right-of-way, except that the placement in the right-of-way of new or modified utility poles in single-family residential zoning districts or areas zoned as historic as of August 28, 2018, shall remain subject to any applicable zoning requirements that are consistent with sections 67.5090 to 67.5103 RSMo. Small wireless facilities collocated outside the right-of-way in property not zoned primarily for single-family residential use shall be classified as permitted uses and not subject to zoning review or approval. Such small wireless facilities and utility poles shall be installed and maintained as not to obstruct or hinder the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way by the City, other governmental authorities or other authorized right-of-way users.

3. A wireless provider must obtain a permit from the City and with such reasonable conditions as may be imposed by the City, for work in a right-of-way that will involve excavation, affect traffic patterns, obstruct traffic in the right-of-way, or materially impede the use of a sidewalk.

4. Each new, replacement, or modified utility pole installed in the right-of-way shall not exceed the greater of ten feet in height above the tallest existing utility pole in place as of January 1, 2019 located within five hundred feet of the new pole in the same right-of-way, or fifty feet above ground level. New small wireless facilities in the right-of-way shall not extend more than ten feet above an existing utility pole in place as of August 28, 2018, or for small wireless facilities on a new utility pole, above the height permitted for a new utility pole. A new, modified, or replacement utility pole that exceeds these height limits shall be subject to all applicable zoning requirements that apply to other utility poles, to the extent consistent with sections 67.5090 to 67.5103 RSMo.

5. A wireless provider shall be permitted to replace decorative poles when necessary to collocate a small wireless facility, but any replacement pole shall reasonably conform to the design aesthetics of the decorative pole or poles being replaced, as determined by the Public Works Director.

6. Subject to subsection 525.040.3, and except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. Section 1.1307(a)(4) of the Federal Communications Commission rules, a wireless provider must use appropriate and reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district. Any such design or concealment measures shall not have the effect of prohibiting any provider's technology, nor shall any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

7. Small wireless facility collocations shall not interfere with or impair the operation of existing utility facilities, or City, or third-party attachments. A wireless provider shall repair, at the wireless provider's expense, all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and shall return the right-of-way to its functional equivalence before the damage under the competitively neutral, reasonable requirements and specifications of the City. If the wireless provider fails to make the repairs required by the City within a reasonable time after written notice, the City may make those repairs and charge the wireless provider the reasonable, documented cost of such repairs.

Section 525.040 Permits for Poles in Right-of-Way and Wireless Facilities in All Locations.

1. The provisions of this section shall apply to the permitting of small wireless facilities to be installed by or for a wireless provider in or outside the right-of-way and to the permitting of the installation, modification, and replacement of utility poles by a wireless provider inside the right-of-way.

2. Wireless providers or their agents shall apply for and obtain a permit pursuant to applicable Code and this Chapter to collocate a small wireless facility or install a new, modified, or replacement utility pole associated with a small wireless facility as provided in Section 525.030 above. The City shall receive applications for, process, and issue such permits subject to the following requirements:

(1) An applicant shall not be required to perform services or provide goods unrelated to the permit, such as in-kind contributions to the City, including reserving fiber, conduit, or pole space for the City;

(2) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant shall include construction and stamped engineering drawings and information demonstrating compliance with the criteria in subdivision (9) of this subsection and an attestation that the small wireless facility complies with the volumetric limitations in subdivision (19) of section 525.020 above;

(3) An applicant shall not be required to place small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(4) There is no limit as to the placement of small wireless facilities by minimum horizontal separation distances;

(5) An applicant shall comply with reasonable, objective, and cost-effective concealment or safety requirements as provided herein;

(6) An applicant that is not a wireless services provider shall provide evidence of agreements or plans demonstrating that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless the City and the applicant agree to extend this period or if delay is caused by lack of commercial power or communications transport facilities to the site and the applicant notifies the City thereof. An applicant that is a wireless services provider shall provide the information required by this subdivision by attestation;

(7) Within fifteen (15) days of receiving an application, the City shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the City shall specifically identify the missing information in writing. The processing deadline in subdivision (8) of this subsection shall be tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline may also be tolled by agreement of the applicant and the City;

(8) An application for collocation shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within forty-five (45) days of receipt of the application. An application for installation of a new, modified, or replacement utility pole associated with a small wireless facility shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within sixty (60) days of receipt of the application;

(9) The City may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements in Section 67.5112.3, RSMo. only if the action proposed in the application could reasonably be expected to:

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

(b) Materially interfere with sight lines or clear zones for transportation, pedestrians, or nonmotorized vehicles;

(c) Materially interfere with compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12213, or similar federal or state standards regarding pedestrian access or movement;

(d) Materially obstruct or hinder the usual travel or public safety on the right-of-way;

(e) Materially obstruct the legal use of the right-of-way by the City, a utility, or other third party;

(f) Fail to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance or regulations promulgated by the state highways and transportation commission that concern the location of ground mounted equipment and new utility poles. Such spacing requirements shall not prevent a wireless provider from serving any location and shall include a waiver, zoning, or other process that addresses wireless provider requests for exception or variance and does not prohibit granting of such exceptions or variances;

(g) Fail to comply with applicable codes, including nationally recognized engineering standards for utility poles or wireless support structures;

(h) Fail to comply with the reasonably objective and documented aesthetics of a decorative pole and the applicant does not agree to pay to match the applicable decorative elements;

(i) Fail to comply with reasonable and nondiscriminatory undergrounding requirements contained in City ordinances as of January 1, 2018, or subsequently enacted for new developments, that require all new utility facilities in the area to be placed underground and prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval, provided that such requirements include a waiver or other process of addressing requests to install such utility poles and do not prohibit the replacement or modification of existing utility poles consistent with this section or the provision of wireless services.

(10) The City shall document the complete basis for a denial in writing, and send the documentation to the applicant with the communication denying an application. The applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days of the denial without paying an additional application fee. The City shall approve or deny the revised application within thirty (30) days. Any subsequent review shall be limited to the deficiencies cited in the denial;

(11) (a) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities; provided, however, the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same batch; and

(b) An application may include up to twenty separate small wireless facilities, provided that they are for the same or materially same design of small wireless facility being collocated on the same or materially the same type of utility pole or wireless support structure, and geographically proximate. If the City receives individual applications for approval of more than fifty small wireless facilities or consolidated applications for approval of more than seventy-five small wireless facilities within a fourteen (14) day period, whether from a single applicant or multiple applicants, the City may, upon its own request, obtain an automatic thirty (30) day extension for any additional collocation or replacement or installation application submitted during that fourteen(14) day period or in the fourteen(14) day period immediately following the prior fourteen (14) day period. The City shall promptly communicate its request to each affected applicant. In rendering a decision on an application for multiple small wireless facilities, the City may approve the application as to certain individual small wireless facilities while denying it as to others based on applicable requirements and standards, including those identified in this subsection. The City's denial of any individual small wireless facility or subset of small wireless facilities within an application shall not be a basis to deny the application as a whole;

(12) Installation or collocation for which a permit is granted under this Chapter shall be completed within one year after the permit issuance date unless the City and the applicant agree to extend this period, or the applicant notifies the City that the delay is caused by a lack of commercial power or communications transport facilities to the site.

(13) Approval of an application authorizes the applicant to:

(a) Undertake the installation or collocation; and

(b) Operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of ten years, which shall be renewed for equivalent durations so long as the facilities and poles remain in compliance with the criteria set forth in subdivision (9) of this section, unless the applicant and the City agree to an extension term of less than ten years. The provisions of this paragraph shall be subject to the right of the City to require, upon adequate notice and at the facility owner's own

expense, relocation of facilities as may be needed in the interest of public safety and convenience, and the applicant's right to terminate at any time;

(14) Abandoned small wireless facilities shall be removed as provided in Section 525.130 or an agreement, as applicable;

(15) In determining whether sufficient capacity exists to accommodate the attachment of a new small wireless facility, the City shall take into account that any grant of access hereunder shall be subject to a reservation to reclaim such space, when and if needed, to meet a core utility purpose or documented plan projected at the time of the application pursuant to a bona fide development plan; and

(16) In emergency circumstances that result from a natural disaster or accident, the City may require the owner or operator of a wireless facility to immediately remove such facility if the wireless facility is obstructing traffic or causing a hazard on the City's roadway, at the expense of the owner or operator of the wireless facility. In the event that the owner or operator of the wireless facility is unable to immediately remove the wireless facility, the City may remove the wireless facility from the roadway or other position that renders the wireless facility hazardous. Under these emergency circumstances, the City shall not be liable for any damage caused by removing the wireless facility and may charge the owner or operator of the wireless facility the City's reasonable expenses incurred in removing the wireless facility.

3. A permit is not required for:

(1) Routine maintenance on previously permitted small wireless facilities;

(2) The replacement of small wireless facilities with small wireless facilities that are the same or smaller in size, weight, and height; or

(3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes.

For work described in subdivisions (1) and (2) of this subsection that involves different equipment than that being replaced, the wireless services provider shall submit a description of such new equipment so that the City may maintain an accurate inventory of the small wireless facilities at that location.

For work described in subdivisions (1), (2) and (3) of this subsection, the Wireless Provider shall provide at least five business days' notice by e-mail to the Public Works Director for any work that may affect traffic patterns, obstruct traffic in the right-of-way, or materially impede the use of a sidewalk. All work that may affect traffic patterns or, obstruct traffic in the right-of-way shall require an approved traffic management plan and must adhere to

the Manual on Uniform Traffic Control Devices (MUTCD) for traffic control in a work zone. In cases of emergency, the Wireless Provider may proceed with required work without providing at least five business days' notice; however, all emergency work shall be reported as soon as reasonably practicable by e-mail to the Public Works Director. All emergency work occurring outside of business hours shall be immediately reported to on-call Public Works employee. All emergency work which will or may affect traffic upon a road or vehicular access to a road must be coordinated with the City's police department.

4. No approval for the installation, placement, maintenance, or operation of a small wireless facility under this Chapter shall be construed to confer authorization for the provision of cable television service, or installation, placement, maintenance, or operation of a wireline backhaul facility or communications facility, other than a small wireless facility, in the right-of-way.

5. If applicable, the municipal electric utility shall not require an application for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between utility poles, in compliance with applicable codes.

Section 525.050 Collocations on City Poles and Wireless Support Structures Outside of Right-of-Way.

1. This section only applies to collocations on City poles and wireless support structures that are located outside the right-of-way.

2. Subject to subdivision 3 of this section, the City shall authorize the collocation of small wireless facilities on City wireless support structures and poles to the same extent, if any, that it permits access to such structures for other commercial projects or uses. Such collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the City, or its agent, and the wireless provider.

3. The City shall not enter into an exclusive agreement with a wireless provider concerning City poles or wireless support structures, including stadiums and enclosed arenas, unless the agreement meets the following requirements:

(1) The wireless provider provides service using a shared network of wireless facilities that it makes available for access by other wireless providers, on reasonable and nondiscriminatory rates and terms that shall include use of the entire shared network, as to itself, an affiliate, or any other entity; or

(2) The wireless provider allows other wireless providers to collocate small wireless facilities, on reasonable and nondiscriminatory rates and terms, as to itself, an affiliate, or any other entity.

4. When determining whether a rate, fee, or term is reasonable and nondiscriminatory for the purposes of this section, consideration may be given to any relevant facts, including alternative financial or service remuneration, characteristics of the proposed equipment or installation, structural limitations, or other commercial or unique features or components.

Section 525.060 Collocations on City Poles within the Right-of-Way.

1. The provisions of this section apply to collocations on City poles within the right-of-way by a wireless provider.

2. Neither the City nor any person owning, managing, or controlling City poles in the right-of-way shall enter into an exclusive arrangement with any person for the right to attach to such poles. A person who purchases or otherwise acquires a City pole is subject to the requirements of this section.

3. The City shall allow the collocation of small wireless facilities on its poles using the process set forth in section 525.040.

4. An application shall include sealed engineering and construction drawings, as well as plans and detailed cost estimates for any make-ready work as needed, for which the applicant shall be solely responsible.

5. Make-ready work shall be addressed as follows, unless the City (or its successor) and applicant agree to different terms in a pole attachment agreement:

(1) The rates, fees, and terms and conditions for the make-ready work to collocate on a City pole shall be nondiscriminatory, competitively neutral, and commercially reasonable, and shall comply with sections 67.5110 to 67.5121 RSMo;

(2) Unless the City allows the applicant to perform any make-ready work, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within sixty (60) days after receipt of a complete application. If applicable, make-ready work, including any pole replacement, shall be completed by the City within sixty (60) days of written acceptance of the good faith estimate and advance payment by the applicant. The City may require replacement of its pole on a nondiscriminatory basis for reasons of safety and reliability, including a demonstration that the collocation would make the pole structurally unsound, including, but not limited to, if the collocation would cause a utility pole to fail a crash test; and

(3) The person owning, managing, or controlling the City pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance unless the City had determined, prior to the filing of the application, to

permanently abandon and not repair or replace the structure. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work, and shall not include third party fees, charges, or expenses, except for amounts charged by licensed contractors actually performing the make-ready work.

6. When a small wireless facility is located in the right-of-way of the state highway system, equipment and facilities directly associated with a particular small wireless facility, including coaxial and fiber optic cable, conduit, and ground mounted equipment, shall remain in the utility corridor except as needed to reach a City or utility pole in the right-of-way but outside the utility corridor in which the small wireless facility is collocated.

Section 525.070 Rates and Fees.

1. This section governs the rates and fees to collocate small wireless facilities and the rates and fees for the placement of utility poles, but does not limit the City's ability to recover specific removal costs from the attaching wireless provider for abandoned structures or other rates or fees allowed under 67.5110 to 67.5121 RSMo. The rates to collocate on City poles shall be nondiscriminatory regardless of the services provided by the collocating applicant.

2. The City shall not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by sections 67.5110 to 67.5121 RSMo., (while in effect) for the use and occupancy of a right-of-way, for collocation of small wireless facilities on utility poles in the right-of-way, or for the installation, maintenance, modification, operation, and replacement of utility poles in the right-of-way.

3. Application fees shall be as follows:

(a) The total fee for any application under subsection 2 of Section 525.040 for collocation of small wireless facilities on existing City poles shall be one hundred dollars (\$100.00) per small wireless facility. An applicant filing a consolidated application under subdivision (11) of subsection 2 of Section 525.040 shall pay one hundred dollars (\$100.00) per small wireless facility included in the consolidated application; and

(b) The total application fees for the installation, modification, or replacement of a pole and the collocation of an associated small wireless facility shall be five hundred dollars (\$500.00) per pole.

4. (1) The rate for collocation of a small wireless facility to a City pole shall be one hundred fifty dollars (\$150.00) per pole per year.

(2) The City shall not charge a wireless provider any fee, tax other than a tax authorized by subdivision (3) below, or other charge, or require any other form of payment or

compensation, to locate a wireless facility or wireless support structure on privately owned property, or on a wireless support structure not owned by the City.

(3) The City shall not demand any fees, rentals, licenses, charges, payments, or assessments from any applicant or wireless provider for, or in any way relating to or arising from, the construction, deployment, installation, mounting, modification, operation, use, replacement, maintenance, or repair of small wireless facilities or utility poles, if not allowed by section 67.5116 RSMo. (while in effect).

Section 525.080 Authority and Rights Reserved.

1. Subject to the provisions of sections 67.5110 to 67.5121 RSMo (while in effect) and applicable federal law, the City shall continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to wireless support structures and utility poles, except that the City shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the City, other than to comply with applicable codes.

2. Nothing in this Ordinance limits the ability of the City to require an Applicant to obtain one or more permits of general applicability that do not apply exclusively to Wireless Facilities in addition to the Permit required by this Ordinance.

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

4. Nothing herein shall be deemed to relieve an Applicant of the provisions of an existing franchise, license or other agreement or permit.

5. The exercise of one remedy under this Ordinance shall not foreclose use of another, nor shall the exercise of a remedy or the payment of damages or penalties relieve an Applicant of its obligations to comply with its Permits. Remedies may be used alone or in combination; in addition, the City may exercise any rights it has at law or equity.

6. The City hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provisions of this Ordinance.

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

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

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

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

10. The use of the right-of-way under this Chapter is subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A person using the right-of-way pursuant to this Chapter shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers.

11. In addition to the requirements set forth in this Chapter, the City may adopt such orders, rules and regulations which are reasonably necessary to accomplish the purposes of this Chapter and are consistent herewith.

12. In no event shall any language or requirement in this Chapter be construed as or constitute a waiver or limitation of City's defenses with regard to sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, states, and/or laws.

Section 525.090 Prior Agreements.

1. This Chapter 525 shall not nullify, modify, amend, or prohibit a mutual agreement between the City and a wireless provider made prior to August 28, 2018, but an agreement that does not fully comply with sections 67.5110 to 67.5121 RSMo (while in effect) shall apply only to small wireless facilities and utility poles that were installed or approved for installation before August 28, 2018, subject to any termination provisions in the agreement.

2. Such an agreement shall not be renewed, extended, or made to apply to any small wireless facility or utility pole installed or approved for installation after August 28, 2018, unless it is modified to fully comply with sections 67.5110 to 67.5121 RSMo (while in effect). In the absence of an agreement, and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and utility poles that become operational or were constructed before August 28, 2018, may remain installed and be operated under the requirements of sections 67.5110 to 67.5121 RSMo (while in effect).

Section 525.100 Indemnification, Insurance, and Bonding Requirements.

1. A wireless provider shall indemnify and hold the City and its elected and appointed officers and employees harmless against any damage or personal injury caused by the negligence of the wireless provider or its employees, agents, or contractors.

2. A wireless provider shall have in effect insurance coverage consistent with Section 67.5121.2 RSMo. sufficient to to protect the City and its officers and employees from any damage or personal injury caused by the negligence of the wireless provider or its employees, agents, or contractors. A self-insured wireless provider does not need to name the City or its officers and employees as additional insured. A wireless provider shall

furnish proof of insurance, if applicable, prior to the effective date of any permit issued for a small wireless facility.

3. The bonding requirements for small wireless facilities shall be one thousand five hundred dollars (\$1,500.00) per small wireless facility. For wireless providers with multiple small wireless facilities within the City, the total bond amount across all facilities shall be seventy-five thousand dollars (\$75,000.00), which amount may be combined into one bond instrument. The purpose of such bonds shall be to:

(1) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines need to be removed to protect public health, safety, or welfare;

(2) Restore the right-of-way in connection with removals under section 67.5113 RSMo;

(3) Recoup rates or fees that have not been paid by a wireless provider in over twelve months, so long as the wireless provider has received reasonable notice from the City of any noncompliance listed above and been given an opportunity to cure;

4. Applicants that have at least twenty-five million dollars in assets in the state and do not have a history of permitting noncompliance within the City shall, under section 67.1830 RSMo, be exempt from the insurance and bonding requirements otherwise authorized by this Chapter.

5. Any contractor, subcontractor, or wireless infrastructure provider shall be under contract with a wireless services provider to perform work in the right-of-way related to small wireless facilities or utility poles, and such entities shall be properly licensed under the laws of the state and all applicable City ordinances. Each contracted entity shall have the same obligations with respect to his or her work as a wireless services provider would have under this Chapter, under sections 67.5110 to 67.5121 RSMo and other applicable laws if the work were performed by a wireless services provider. The wireless services provider shall be responsible for ensuring that the work of such contracted entities is performed consistently with the wireless services provider's permits and applicable laws relating to the deployment of small wireless facilities and utility poles, and responsible for promptly correcting acts or omissions by such contracted entity.

Section 525.110 Relocation and Standards.

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

2. The construction, operation, maintenance, and repair of Small Wireless Facilities shall be in accordance with Applicable Codes and relevant City ordinances pertaining to construction, operation, maintenance, and repair inside or outside the Right-of-Way.

3. Small Wireless Facilities will not materially interfere with the following:

- (i) the safe operation of traffic control equipment or authority owned communications equipment; or
- (ii) sight lines or clear zones for transportation, pedestrians, or nonmotorized vehicles; or
- (iii) compliance with compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12213, or similar federal or state standards regarding pedestrian access or movement.

4. Small wireless facility collocations in the Right-of-Way completed on or after August 28, 2018, shall not interfere with or impair the operation of existing utility facilities, or authority or third-party attachments.

5. Any and all Rights-of-Way disturbed or damaged during the construction of Small Wireless Facilities shall be promptly repaired or replaced by the Applicant, at the Applicant's expense, to its functional equivalence as existed before the disturbance or damage.

6. All small cell wireless facilities and associated poles owned, leased, or controlled by the wireless provider shall be maintained by and at the expense of the wireless provider in good and clean condition that includes but not limited to being free of rust, peeling paint, and graffiti.

7. For metal poles used for a small cell wireless facility, all cabling shall be run inside the pole to the maximum extent technically feasible.

8. No generators shall be allowed at any small cell wireless facility or associated pole.

9. Unless otherwise preempted by federal law or regulation, small cell wireless facilities and associated poles (i) shall not be lighted nor contain any markings, except for ownership and contact information to be no larger than two inches in height unless required by applicable federal or state agency; and (ii) commercial advertising shall not be allowed.

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

11. Each Wireless Infrastructure Provider, contractor or subcontractor shall have the same obligations with respect to its work as Wireless Services Provider would have hereunder and Applicable Law if the work were performed by the Wireless Services Provider. The Wireless Services Provider shall be responsible for ensuring that the work

of contracted entities is performed consistent with their Permits and Applicable Law, and shall be responsible for promptly correcting any acts or omissions by such contracted entity.

Section 525.120 Application for Permit.

All applications for a permit shall be filed with the City's Public Works Department. The Public Works Director is authorized to develop an application for use by Wireless Service Providers. An Application for a Permit shall include, at minimum, the following:

1. Construction and stamped engineering drawings by a Missouri licensed engineer which demonstrate compliance with the criteria in Section 525.040.2(9);
2. An attestation that the Small Wireless Facilities comply with the volumetric limitations in the definition of Small Wireless Facility;
3. Information on the height of any new, replacement, or modified Utility Pole;
4. Applicable indemnity, insurance, and performance bond information required under City Ordinances;
5. An Applicant that is not a Wireless Services Provider must provide evidence of agreements or plans demonstrating that the Small Wireless Facilities will be operational for use by a Wireless Services Provider within one year after the Permit issuance date, unless the City and the Applicant agree to extend this period or if the Applicant notifies the City the delay is caused by lack of commercial power or communications transport facilities. An Applicant that is a Wireless Services Provider must provide this information by attestation;
6. Plans and detailed cost estimates for any make-ready work as needed. The Applicant shall be solely responsible for the cost of any make-ready work; and
7. Projected commencement and termination dates for the Permit, or if such dates are unknown at the time the Permit is issued, a provision requiring the Permit holder to provide Director of Public Works with reasonable advance notice of such dates once they are determined.

Section 525.130 Removal of small wireless facilities.

1. The City, through its Public Works Director, may request in writing that an owner of a small wireless facility confirm with the City the continued use or abandonment of a small wireless facility or associated utility pole. If the owner fails to respond to the written request within 60 days of receipt with confirmation that such facilities either remain in use or have been abandoned, the wireless provider shall be deemed to have abandoned such small wireless facility and/or associated pole and the City will notify the

owner of any such decision in writing. The owner may appeal any decision by the City using the procedures as set forth in Section 500.378 of the City's municipal code.

2. The City, upon such terms as it may impose, may give a wireless provider written permission to abandon, without removing, any small wireless facility, or portion thereof, directly constructed, operated or maintained. Unless such permission is granted or unless otherwise provided in this Chapter, a wireless provider shall remove within a reasonable time the abandoned small wireless facility and associated pole and shall restore, using prudent construction standards, any affected right-of-way to their functional equivalence at the time such system was installed and in accordance with the then adopted engineering standards, so as not to impair their usefulness. In removing its facilities and equipment, a wireless provider shall refill, at its own expense, any excavation necessarily made by it and shall leave to return the right-of-way to its functional equivalence prior to such removal without materially interfering with any authority pole or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the right-of-way, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Chapter and any bonding provided shall continue in full force and effect during the period of removal and until full compliance by a wireless provider with the terms and conditions of this Chapter.

3. Upon abandonment of any small wireless facility, wireless support structure, or associated pole in place as approved by the City pursuant to subsection 4, below, a wireless provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of such poles or equipment allowed to remain within the right-of-way.

4. Upon written approval by City, a wireless provider may abandon underground portions of a small wireless facility in place so long as it does not materially interfere with the use of the right-of-way or with the use thereof by any public utility, cable operator or other person.

5. If a wireless provider defaults under any material provision of this Chapter and such default is not cured within 60 days following delivery of written notice by the City to the wireless provider of its default, the City shall maintain all its rights and remedies, at law and in equity, that are consistent with applicable law, including Sections 67.5110 to 67.5122 RSMo.

Section 525.140 Appeals.

Unless otherwise provided for in this Chapter, the procedures of 410.530, shall govern appeals by any aggrieved person of a final action of any City Officer, employee, board, or commission that are claimed by an aggrieved person to be unlawful or an unconstitutional taking of property without compensation. To the fullest extent permitted by law, the review procedures of 410.500 shall be exhausted before any action may be filed in any court against the City or its officers, employees, boards, officials or commissions. Nothing

herein shall be deemed to unlawfully limit any remedy that is required to be available as a matter of law.

Section 525.150 Expiration.

This Chapter 525 shall expire at such time that Sections 67.5110 to 67.5122 RSMo. expire, except that for small wireless facilities already permitted or collocated on City poles prior to such date, the rate set forth in Section 525.060 for collocation of small wireless facilities on City poles shall remain effective for the duration of the permit authorizing the collocation.

Section 525.160 Severability.

If any provision of this Chapter or the application thereof to anyone or to any circumstance is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby.”

Section II: In the event that any section, sentence, clause, phrase or portion of this Ordinance is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall continue in full force and effect, to the extent the remainder can be given effect without the invalid portion.

Section III: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, City Clerk

CERTIFICATION

I, Paula Henderson, do hereby certify that I am the duly appointed and acting City Clerk for the City of Bolivar, Missouri; that the foregoing Ordinance No. _____ was adopted by the Board or Aldermen and thereafter approved by the Mayor and became effective on _____, 2019; and that said Ordinance remains in full force and effect, having never been altered, amended nor repealed.

Paula Henderson, City Clerk

ORDINANCE COVER SHEET

BILL NO. 2019-39

ORDINANCE NO. _____

**“AN ORDINANCE AMENDING CHAPTER 520 OF THE MUNICIPAL CODE
OF THE CITY OF BOLIVAR, MISSOURI RELATED TO REGULATIONS
FOR RIGHT-OF-WAY MANAGEMENT.”**

Filed for public inspection on: June _____, 2019.

First reading _____ In Full; _____ By Title On: June _____, 2019.

Second reading _____ In Full; _____ By Title On: June _____, 2019.

Vote by the Board of Aldermen on: June _____, 2019.

_____ Aye; _____ Nay; _____ Absent.

_____ Approved by the Mayor on: June _____, 2019.

_____ Vetoed by the Mayor on: _____.

Board of Aldermen Vote to Override Veto on _____.

_____ Aye; _____ Nay; _____ Abstain

Bill Effective Date: June _____, 2019

AN ORDINANCE AMENDING CHAPTER 520 OF THE MUNICIPAL CODE OF THE CITY OF BOLIVAR, MISSOURI RELATED TO REGULATIONS FOR RIGHT-OF-WAY MANAGEMENT.

WHEREAS, the City of Bolivar, Missouri (“City”) has specifically been granted authority including Section 67.1830 RSMo. to establish permitting requirements for structures or equipment for wireless communication facilities in the public rights-of-way (“ROW”) and the City desires to reaffirm its intent to regulate and enforce permitting requirements for the wireless communication facilities in the ROW; and

WHEREAS, the Missouri General Assembly enacted the “Uniform Small Wireless Facility Deployment Act” §§ 67.5110 to 67.5121 RSMo., which governs certain installations of wireless equipment in the City’s Rights-of-Way, which had an effective date of January 1, 2019; and

WHEREAS, consistent with state and federal law, and previous ordinances articulating the Board of Aldermen’s legislative findings regarding the value of the ROW and necessity to regulate uses of the ROW, the Board of Aldermen desires to enact updated regulations for small wireless facilities within the ROW and other pedestrian and vehicular ways in light of the recently enacted “Uniform Small Wireless Facility Deployment Act”; and

WHEREAS, the City desires to enact the following amendments to Chapter 520 of the Municipal Code of the City of Bolivar, Missouri, entitled “Excavations and Public Rights-of-Way Management.”

NOW, THEREFORE, BE IT ORDAINED BY BOARD OF ALDERMEN OF THE CITY OF BOLIVAR, MISSOURI, AS FOLLOWS:

Section 1. The Municipal Code of the City of Bolivar, Missouri is hereby amended such that Section 520.050, entitled “Permit Required; Requirements”, is hereby amended to read as follows, with the underlined words added and the ~~struck through~~ words repealed:

...

B. Facilities Maintenance Permit; Exceptions. No Person shall perform Facilities Maintenance at a specified location in the Rights-of-Way without first obtaining a Facilities Maintenance Permit from the Director, except where such Facilities Maintenance is expressly authorized by an existing valid Excavation Permit for the applicable Facilities Maintenance location. In addition to the applicable conditions and obligations set forth in this Chapter, conditions of a Facilities Maintenance Permit shall be as established in such Permit and shall include requirements of notice to and approval by the City whenever traffic lanes are to be obstructed, manhole covers or safety barriers removed or altered, temporary or other barricades installed, and other events set forth in the Facilities Maintenance Permit. All Facilities Maintenance Permits shall expire after sixty (60) days from the date of issuance, unless otherwise specified in such Permit. A Facilities Maintenance Permit shall not be required for:

1. ROW Users performing routine Maintenance which does not require Excavation, does not disrupt traffic or pedestrians, and requires no more than four (4) hours to complete, provided that at minimum two (2) hours' notice is provided to the City during normal business hours;

2. Emergency situations as more fully described in Subsection (D) below; or

3. Contractors working on the construction or reconstruction of public improvements and which are operating pursuant to a contract with the City for such construction.

4. Routine maintenance on previously approved Small Wireless Facilities as defined in Section 410.640 of the City's Code, replacement of Small Wireless Facilities that are the same or smaller in size, weight, and height, or installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities, as defined by § 67.5111(14) RSMo., that are strung on cables between Utility Poles in compliance with applicable safety and building codes, when such work will not involve Excavation, affect traffic patterns, obstruct traffic in the ROW, or materially impede the use of a sidewalk, and provided the ROW User submits as-builts of the new Small Wireless Facilities or Micro Wireless Facilities so the City may maintain an accurate inventory of Facilities installed in the ROW.

...

G. *Wireless Antennas and Facilities.* Pursuant to City authority, including by Section 67.1830(f) RSMo. and the Uniform Small Wireless Facility Deployment Act (§§67.5110-67.5121 RSMo.), and due to the limited space in the City's Rights-of-Way, and in order to minimize obstructions and interference with the use of the Rights-of-Way and to ensure public traffic safety, while also seeking to facilitate delivery of broadband technologies to City residents and businesses, preserve property values, and enforce the public policy to maintain neutrality as to ownership of wireless locations, wireless Facilities and equipment shall not be permitted in the Rights-of-Way in compliance with the requirements applicable to other Facilities and users in the ROW, and the additional requirements set forth in this Subsection for wireless antennas and Facilities. on new structures, except where required by law, unless the Board of Aldermen determines on a non-discriminatory basis such proposed application is in the public interest addressing all concerns stated herein, and provided such use and location has received prior, separate zoning authorization to the extent permitted by law. In such circumstances where any new wireless application is permitted in the ROW, such uses shall be subject to reasonable regulations, including any applicable specifications, compensation, and other terms established by the City in such approval or agreements. Wireless Antennas and related Facilities on existing structures or underground may be permitted in the same manner as other uses in the Rights of Way but subject to approval, denial or condition relating to location, design, height, appearance, safety, and such other zoning, building specification or other regulations, except as may be limited by law.

Definitions. For the purposes of this Section, the following defined terms shall mean:

~~“Small Wireless Facility”—an Antenna and associated equipment of: (1) no more than four (4) cubic feet in volume (comprised of no more than twelve (12) square feet of exterior surface area (excluding the surface width equal to the width of the support structure or pole to which it is mounted) on an imaginary enclosure around the perimeter thereof, excluding cable or cable conduit of four inches (4”) or less); (2) located with the consent of the owner on an Existing Structure such as an electrical transmission tower, water tower, utility pole, building, or street light ; (3) not exceeding six feet (6’) above the top of the Existing Structure for a total height not exceeding forty five (45’) feet (nor taller more than 6’ above the average of similar poles within 300’ feet); (4) a similar color to the Existing Structure; (5) any portion above the Existing Structure shall be concealed and of the same dimensions and appearance so as to appear to be a natural extension of the Existing Structure; provided that up to two (2) rod antenna less than two inches (2”) in diameter and a height of not more than thirty four inches (34”) may be located exposed directly over the Existing Structure in lieu of an enclosure or concealment; and (6) shall not emit noise audible from the building line of any residential zoned or used property. Volume shall be the measure of the exterior displacement of the Small Wireless Facility.~~

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

1. *General Conditions.* Any wireless Facility in the Right-of-Way ~~shall be authorized only for entities that have a current and unexpired lawful ROW Agreement or Franchise with the City pursuant to 520.030.A, and~~ shall be subject to conditions relating to the location (including prohibited or limited locations), design, height, appearance, safety, radio-frequency, and other interference issues as may be lawfully imposed by the City where necessary or appropriate to protect the public, and to conform to policies and interests of the public as may be set forth in special district plans, historic areas, or other policies as may be reasonably adopted by the City to address changing infrastructure, technology, and uses of the Right-of-Way and/or City Facilities. A wireless Facility shall not be located or installed in a manner that results in interference with or impairs the operation of existing utility facilities or City or third-party attachments. Wireless antennas or Facilities shall further comply with (1) all applicable requirements for installation of any Facilities in the ROW as set forth in this Chapter 520, including a ROW Permit; (2) the requirements of this Section; and (3) requirements for installation of wireless antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 *et seq.* RSMo.), Uniform Small Wireless Facility Deployment Act (§§ 67.5110 *et seq.* RSMo.), applicable zoning, building, and other regulations and approvals, specifically including Article XII of Chapter 410 (the “Zoning Code”).

2. *Specific Conditions.*

- a. Small Wireless Facilities. Any Small Wireless Facility meeting the requirements for a Small Wireless Facility as defined by the Zoning Code, Section 410.640 and as provided in the Zoning Code, Section 410.670 shall be authorized to be located in the Rights-of-Way with approval of the Director subject to the provisions of Chapter 525 of the City's Municipal Code.

~~2. New Structures. Wireless Facilities shall not be permitted in the Right of Way on new structures, provided that if evidence warranting an exception is provided by the Applicant pursuant to Section 520.050.I, the Board of Aldermen may grant an exception authorizing a new structure for a wireless Facility if it also determines on a non-discriminatory basis such proposed application is in the public interest in light of the purposes of this Section and Subsection, and provided such use and location has received prior, separate zoning authorization as may be required by Chapter 410, to the extent permitted by law. In such circumstances where any new wireless structure application is permitted in the Right of Way, such use shall be subject to reasonable regulations or conditions and including any applicable specifications, compensation, and other terms established by the City in such approval or agreement as necessary or appropriate to preserve the purposes of this Section and Subsection.~~

~~a.b.~~ All other Wireless in Right-of-Way. Any wireless Facility located on an Utility Pole or Existing Structure, ~~as defined by this Subsection,~~ but not meeting the requirements of ~~subsections~~ Small Wireless Facilities-2. General Conditions or 3. Small Wireless Collocation, above, may be approved, subject to conditions as may be imposed consistent with the purposes of this Section, only upon approval by the Board of Aldermen upon a determination by the Board of Aldermen that such wireless Facility is: (1) in the public interest to provide a needed service to persons within the City, (2) cannot feasibly meet all of the requirements of a "Small Wireless Facility" or otherwise, but varies from such requirements to the minimum extent necessary, (3) does not negatively impact appearance or property values in light of the location, design, and circumstances to be approved, (4) does not create any reasonable safety risk, and (5) complies with all zoning, Right-of-Way, and other applicable requirements.

~~3. Wireless Facility Compensation Requirements. If a Small Wireless Facility is to be located on a City-owned structure or Utility Pole, an annual payment of \$150.00 per attachment, or such other higher amount as may be established by applicable law, shall be required. Unless otherwise established by the City Board of Aldermen or applicable law, compensation to the City for use of City Right of Way or structures for wireless facilities, in addition to any linear foot or other required compensation and conditions, including as authorized by § 67.1846 RSMo., Section 520.030.A above, and as otherwise may be provided, shall be as follows unless otherwise lawfully provided for in the agreement authorizing such use:~~

3.

~~City Structures. If a wireless facility is to be located on a City owned structure acceptable for such use by the City, a pole attachment agreement, or other written authorization shall be required with terms including insurance, indemnification, and a monthly payment of \$200.00 per attachment or such other compensation as may be lawfully provided for in such agreement or authorization;~~

~~Third-Party Structures. If a wireless facility is to be located on a structure owned by a third-party approving of such use, such facility shall pay a user fee to the City relating to use of the Right-of-Way, in the amount of the Antenna fees provided by the Board of Aldermen.~~

~~Application Requirements. Any application including one or more wireless Antennas or Facilities shall include all requirements for (1) installation of any Facilities in the Right-of-Way as set forth in this Section, (2) the requirements of this Subsection, and also include (3) requirements for installation of wireless Antennas and Facilities set forth in the Uniform Wireless Communications Infrastructure Deployment Act (§§ 67.5090 et. seq. RSMo.) or other applicable law including written proof of consent of landowner (copy of the Right-of-Way Agreement) and of structure owner (document authorizing use of the structure). A fee of \$500.00 for each wireless collocation or replacement structure application, and \$1500 for each new wireless structure application shall be required, unless otherwise provided by the Board of Aldermen.~~

H. Underground and Collocation of Facilities Required; Exceptions. Except as provided herein or where prohibited by applicable law, no Person may erect, construct or install new poles or other Facilities above the surface of the Rights-of-Way without the written permission of the City based on good cause established by Applicant and found by the City, unless the City's authority has been pre-empted by state or federal law. In addition, all new fiber optics, coaxial, and similar cable Facilities shall be located within existing conduit, trenches, or other Facilities to minimize unnecessary use of the ROW space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Rights-of-Way in the public interest except where preempted by law or where good cause is established and written permission granted by the City. Such permission may be granted by the Board of Aldermen when other similar Facilities exist above-ground and conditions are such that underground construction is impossible, impractical or unfeasible, as determined by the City, and when in the City's judgment the above-ground construction has minimal aesthetic impact on the area where the construction is proposed. ~~Unless extraordinary circumstances exist, good cause shall not include authorization for above-ground Facilities requiring new poles or major modification to existing above-ground structures.~~ Where reasonable and appropriate and where adequate Rights-of-Way exists, the ROW User shall place above-ground Facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible. New Utility Poles and related ground mounted equipment shall be permitted to be installed above ground; provided, however, that to ensure unobstructed pedestrian use and City maintenance of the ROW and minimize visual obstructions for vehicular traffic, a new Utility Pole and any ground mounted equipment related to that Utility Pole or the equipment thereon shall not be installed within one hundred fifty feet (150') of another Utility Pole or other ground mounted equipment on the same side of the ROW. A replacement Utility Pole that

is installed in lieu of an existing Utility Pole and is installed within ten feet (10') of the existing Utility Pole shall not be considered a new Utility Pole subject to the spacing requirements herein. Such spacing regulations as applied to that specific site may be altered, reduced, or waived by the Director upon good cause shown by the Applicant, including: (1) when and where nearby Utility Poles exist that are spaced closer than one hundred fifty feet apart (150'); (2) when conditions are such that no Existing Structure is available for placement of Facilities; and (3) the Utility Pole can be placed to be minimally visually intrusive.

~~I. *Use of Existing Poles/Facilities Required; Exceptions.* All new Facilities or structures shall collocate on existing poles or within existing conduit, trenches or other Facilities to minimize unnecessary use of Rights-of-Way space, reduce potential existing or future interference and obstructions, and to reduce the cost to the public or others therefrom, and to maximize the public's ability to use and license appropriate private or public uses of the Rights-of-Way in the public interest (except where preempted by law or where good cause is established as determined by the City applying these objectives). Where existing poles or Facilities are available, or exist at or near the proposed use, unless otherwise approved, the Applicant must either use such Facilities or file a written request verified by the Applicant for exception specifying the specific reasons why such Facilities are not available or feasible to be used.~~

...

~~K. *Exclusion of Certain ~~ded~~ Locations/Facilities.* The Director may designate certain locations or Facilities in the Rights-of-Way to be excluded from use by the Applicant for its Facilities. In the event such exclusions conflict with the reasonable requirements of the ROW User, the City will cooperate in good faith with the ROW User to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW. To the extent permitted by applicable law, the Director may designate certain locations or Facilities in the Rights-of-Way to be excluded from use by the ROW User, including but not limited to, ornamental or similar specially-designed street lights or other Facilities or locations which, in the reasonable judgment of the Director cannot safely bear the weight or wind loading thereof, or any other Facility or location that in the reasonable judgment of the Director would be rendered unsafe or unstable by the installation. The Director may further exclude certain other Facilities that have been designated or planned for other use or are not otherwise available for use by the ROW User due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with the reasonable requirements of the ROW User, the City will cooperate in good faith with the ROW User to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial cost nor require the City to acquire new locations for the ROW User.~~

Section 2. The Municipal Code of the City of Bolivar, Missouri is hereby amended such that Section 520.090, entitled "ROW User Responsibilities" is hereby amended to read as follows, with the underlined words added and the ~~struck through~~ words repealed:

A. *Insurance; Exceptions.* Except as provided in this Section, each ROW User shall provide, at its sole expense, and maintain during the term of any ROW Use Agreement or Franchise or anytime the ROW User has Facilities in the ROW, commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A", that shall protect the ROW User, the City, and the City's officials, officers, and employees from claims which may arise from such use of the ROW, whether such operations are by the ROW User, its officers, directors, employees and agents, or any contractors or subcontractors of the ROW User. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all ROW User operations, products, services or use of automobiles, or construction equipment. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive the City's sovereign immunity. An endorsement which states that the City as an additional insured with full and equivalent coverage as the insured under the insured's policy and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the Director, along with copies of the policy and all other documentation, shall be provided. If the Person is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts. Any self-insurance or deductible above fifty thousand dollars (\$50,000.00) must be declared to and pre-approved by the City. The insurance requirements in this Section or otherwise shall not apply to a ROW User to the extent and for such period as the ROW User is exempted from such requirements pursuant to § 67.1830(6)(a) RSMo. and has on file with the City Clerk an affidavit certifying that ROW User has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted unless otherwise provided by a ROW Use Agreement or Franchise. Additionally, in accordance with § 67.5121(3), a self-insured ROW User shall not be required to obtain insurance naming the City as an additional insured solely to the extent such ROW User is utilizing "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act (§§ 67.5110-67.5121 RSMo.) within the ROW. This exception to the City's insurance requirements shall only apply as related to "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate insurance to the City for any other activities or operations. The City reserves the right to waive any and all requirements under this Section when deemed to be in the public interest.

B. *Indemnification.* Any Person performing Excavation or ROW User as a condition of use of the Rights-of-Way shall at its sole cost and expense fully indemnify, protect, defend (with counsel acceptable to the City), and hold harmless the City, its municipal officials, officers, employees, and agents, from and against any and all claims, demands, suits, proceedings, and actions, liability, and judgment by other Persons for damages, losses, costs, and expenses, including attorney fees, arising, directly or indirectly, in whole or in part, from the action or inaction of the Person performing Excavation or ROW User, its agents, representatives, employees, contractors, subcontractors, or any other Person for whose acts the Person performing Excavation or ROW User may be liable, in constructing, operating, maintaining, repairing, restoring, or removing Facilities or other structures, or use of the Rights-or-Way or the activities

performed, or failed to be performed, by the Person performing Excavation or ROW User under this Chapter or applicable law, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents, or contractors. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the Person from the duty to defend against liability or its duty to pay any judgment entered against the City, or its agents. This indemnification shall survive the expiration or termination of any ROW Use Agreement, License, or ROW Permit. Provided however, that in accordance with § 67.5121(2), a ROW User solely to the extent a ROW User is operating a "Small Wireless Facility" as defined in the Uniform Small Wireless Facility Deployment Act (§§ 67.5110-67.5121 RSMo.) within the ROW shall only indemnify and hold the City, its officers and employees, harmless against any damage or personal injury caused by the negligence of the ROW User, its employees, agents, or contractors. This exception shall only apply to the ROW User's "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide indemnification to the City for any other activities or operations.

C. Performance and Maintenance Bonds.

1. *Bond Required.* Prior to any work, a ROW User shall establish in the City's favor a performance and maintenance bond in an amount to be determined by the Director to guarantee the restoration of the Rights-of-Way as more fully provided in Section 520.100.B.4. The bond shall continue in full force and effect for a period of forty-eight (48) months following completion of the work. The Director may waive this requirement when the work involves, as determined in the sole discretion of the Director, no or only minor disruption or damage to the Rights-of-Way. The bond requirement herein shall not apply to a ROW User who has on file with the City an affidavit certifying that it has twenty-five million dollars (\$25,000,000.00) in net assets and is otherwise therefore so exempted.
2. *Failure to Satisfactorily Complete Restoration.* If a ROW User fails to complete the work in a safe, timely, and competent manner or if the completed restorative work fails without remediation within the time period for the bond (as determined by the Director), then after notice and a reasonable opportunity to cure, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or Abandonment of any property of the ROW User and the cost of completing work in or restoring the Rights-of-Way, up to the full amount of the bond. The City may also recover against the bond any amount recoverable against a security fund or letter of credit where such amount exceeds that available under a security fund or letter of credit.
3. *Bond Terms.* The bond shall be issued by a surety with an "A" or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the City's Attorney and shall contain the following endorsement: "This bond may not be cancelled or allowed to lapse until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

4. *Exception.* In lieu of the bond required herein, the ROW User may establish in the City's favor such other security as the Director may determine to be commensurate with the noted bonding requirements including, but not limited to, an annual bond to be maintained in the minimum amount of twenty-five thousand dollars (\$25,000.00). Additionally, in accordance with § 67.5121(4), the bonds required for "Small Wireless Facilities" as defined in the Uniform Small Wireless Facility Deployment Act (§§ 67.5110-67.5121 RSMo.) shall not exceed one thousand five hundred dollars (\$1,500.00) per "Small Wireless Facility" or more than seventy-five thousand dollars (\$75,000.00) for all "Small Wireless Facilities" within the ROW of a ROW User. This exception to the City's bonding requirements shall only apply as related to such "Small Wireless Facilities" and shall not otherwise alter the obligations of a ROW User to provide appropriate bonds to the City for any other activities or operations.

Section 3. If any clause, word, paragraph, section, or other part of portion of this ordinance is held to be invalid, illegal, or unconstitutional for any reason, the Board of Aldermen hereby declares it would nevertheless have enacted the remaining portions thereof and such remaining portions shall remain in full force and effect.

Section 4. This Ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED by the Board of Aldermen and **APPROVED** by the Mayor of the City this ____ day of June, 2019.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, City Clerk

CERTIFICATION

I, Paula Henderson, do hereby certify that I am the duly appointed and acting City Clerk for the City of Bolivar, Missouri; that the foregoing Ordinance No. _____ was adopted by the Board or Aldermen and thereafter approved by the Mayor and became effective on _____, 2019; and that said Ordinance remains in full force and effect, having never been altered, amended nor repealed.

Paula Henderson, City Clerk

ORDINANCE COVER SHEET

BILL NO. 2019-40

ORDINANCE NO. _____

**“AN ORDINANCE AMENDING CHAPTER 410 OF THE MUNICIPAL CODE
OF THE CITY OF BOLIVAR, MISSOURI RELATED TO
COMMUNICATIONS ANTENNAS AND SUPPORT STRUCTURES.”**

Filed for public inspection on: July _____, 2019.

First reading _____ In Full; _____ By Title On: July _____, 2019.

Second reading _____ In Full; _____ By Title On: July _____, 2019.

Vote by the Board of Aldermen on: July _____, 2019.

_____ Aye; _____ Nay; _____ Absent.

_____ Approved by the Mayor on: July _____, 2019.

_____ Vetoed by the Mayor on: _____.

Board of Aldermen Vote to Override Veto on _____.

_____ Aye; _____ Nay; _____ Abstain

Bill Effective Date: July _____, 2019

AN ORDINANCE AMENDING CHAPTER 410 OF THE MUNICIPAL CODE OF THE CITY OF BOLIVAR, MISSOURI RELATED TO COMMUNICATIONS ANTENNAS AND SUPPORT STRUCTURES.

WHEREAS, the City of Bolivar, Missouri (the “City”) has been granted the authority to enact legislation to regulate the construction, placement, and operation of telecommunications towers and antenna pursuant to its zoning powers established in Chapter 89 of the Missouri Revised Statutes and additionally pursuant to its general and specific police powers established by statute authorizing the regulations herein to protect the public health, safety, and welfare; and

WHEREAS, consistent with the Telecommunications Act of 1996, and as amended in 2014, the regulations of this Ordinance will not have the effect of prohibiting the provision of personal wireless services and do not unreasonably discriminate among functionally equivalent providers of such service. The regulations also impose reasonable restrictions to protect the public safety and welfare and to ensure opportunities for placement of antennas with prompt approval by the City. This Ordinance does not attempt to regulate in areas within the exclusive jurisdiction of the FCC; and

WHEREAS, various new state or federal statutes and regulations continue to be enacted, supplemented, promulgated, and amended regarding regulation of certain communications providers, services, and operations as they pertain to local Right-of-Way, zoning regulations, and other municipal authority; and

WHEREAS, the Missouri General Assembly has recently enacted another such law, the “Uniform Small Wireless Facility Deployment Act” §§ 67.5110 to 67.5121 RSMo., governing certain installations of wireless equipment, which has an effective date of January 1, 2019; and

WHEREAS, the Board of Aldermen (the “Board”) desires to continue at all times to ensure compliance with applicable law, and, therefore, finds it in the best interest of the public to update its telecommunication regulations; and

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

WHEREAS, after review of the Planning Commission recommendation, the Board now desires to update its zoning regulations related to support structures and small wireless facilities.

NOW, THEREFORE, BE IT ORDAINED BY BOARD OF ALDERMEN OF THE CITY OF BOLIVAR, MISSOURI, AS FOLLOWS:

Section 1. Section 410.030 of the City Code, entitled “Definitions” is hereby amended to change the definition of “Public Utility”, to read as follows, with the underlined words added and the ~~struck-through~~ words repealed:

PUBLIC UTILITY

Any business which furnishes the general public:

1. Telephone service,
2. Telegraph service,
3. Electricity,
4. Natural gas, or
5. Water and sewer, or
- ~~6. Any other business so affecting the public interest as to be subject to the supervision or regulation by an agency of the State.~~

Section 2. Section 410.090 of the City Code, entitled “Exemptions” is hereby amended to read as follows, with the underlined words added and the ~~struck-through~~ words repealed:

A. The following structures and uses shall be exempt from the provisions of these zoning regulations, unless located in the Single-Family Dwelling Districts (specifically the “R-1” and “R-2” Districts), including the Rights-of-Way in such Districts:

1. Poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves or other similar equipment for the distribution to consumers of telephones and other communications, electricity, gas or water or the collection of sewage or surface water operated or maintained by a public utility, but not including substations located on or above the surface of the ground.
2. Railroad tracks, signals, bridges and similar facilities and equipment located on a railroad right-of-way and maintenance and repair work on such facilities and equipment.

Section 3. Section 410.220 of the City Code, entitled “‘I-1’ Light Industrial District” is hereby amended to read as follows, with the underlined words added and the ~~struck-through~~ words repealed:

...

C. *Use Regulations.*

...

16. Public utility and public service uses as follows:

- a. Substations.
- b. Telephone exchange, ~~microwave towers, radio towers, television towers,~~ telephone transmission buildings, electric power plants.

- c. Public utility storage yards when the entire storage area is enclosed by at least a six (6) foot high wall or fence.

Section 4. All other portions of Section 410.220 not amended herein shall remain in full force and effect.

Section 5. Section 410.230 of the City Code, entitled “‘I-2’ Heavy Industrial District” is hereby amended to read as follows, with the underlined words added and the ~~struck through~~ words repealed:

...

C. *Use Regulations.*

...

15. Public utility and public services uses, except that all antennas, support structures, utility poles, and towers shall be governed by the requirements of Chapter 525 of the City Code.

Section 6. All other portions of Section 410.230 not amended herein shall remain in full force and effect.

Section 7. Section 410.260 of the City Code, entitled “Qualifications and Supplementation to Districts” is hereby amended to read as follows, with the underlined words added and the ~~struck through~~ words repealed:

A. The district regulations hereinafter set forth in this Section qualify or supplement, as the case may be, the district regulations appearing elsewhere in this regulation.

1. Chimneys, cooling towers, fire towers, grain elevators, monuments, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers and spires, church steeples, ~~radio and television towers~~ or necessary mechanical appurtenances usually required to be placed above the roof level and not intended for human occupancy are not subject to the height limitations contained in the Schedule of District Regulations.

2. No accessory structure shall be erected in any required front or side yard and no detached accessory structure shall be erected closer than five (5) feet to any other building. Accessory structures may be located in the rear yard, but shall not be closer than five (5) feet to the rear lot line and shall not be closer to the side lot line than the required side yard setback of the district, except that if the structure has a vehicular alley entrance, the sum of the width of the alley and the setback of the structure shall not be less than twenty-five (25) feet. No accessory structure may occupy more than thirty percent (30%) of the required rear yard area.

PERMISSIBLE LOCATIONS FOR ACCESSORY BUILDING

3. No accessory structure shall be constructed upon a lot until the construction of the main building has been actually commenced and no accessory building shall be used for dwelling purposes.

4. Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers and the ordinary projections of chimneys and flues into the rear yard may be permitted by the Zoning Administrator for a distance of not more than three and one-half (3½) feet and where the same are so placed as not to obstruct light and ventilation.

5. Unless specifically prohibited elsewhere within the zoning regulations, where a lot or tract is used for other than single-family dwelling, more than one (1) principal use may be located upon the lot or tract but only when the building or buildings conform to all requirements for the district in which the lot or tract is located.

6. Whenever the number of employees is restricted in connection with any use in the neighborhood shopping or commercial districts, such maximum number applies only to employees principally engaged in processing, selling or treating materials or products on the premises and not to employees engaged in delivery or similar activities.

~~7. Radio and television towers shall be permitted in any district with a special use permit, providing the height of said radio or television tower does not conflict with any airport approach or landing zone or with any other regulations. Reserved.~~

...

Section 9. All other portions of Section 410.260 not amended herein shall remain in full force and effect.

Section 10. If any clause, word, paragraph, section, or other part of portion of this ordinance is held to be invalid, illegal, or unconstitutional for any reason, the Board of Aldermen hereby declares it would nevertheless have enacted the remaining portions thereof and such remaining portions shall remain in full force and effect.

Section 11. This Ordinance shall take effect and be in force from and after its passage as provided by law.

PASSED by the Board of Aldermen and **APPROVED** by the Mayor of the City this ____ day of July, 2019.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, City Clerk

CERTIFICATION

I, Paula Henderson, do hereby certify that I am the duly appointed and acting City Clerk for the City of Bolivar, Missouri; that the foregoing Ordinance No. _____ was adopted by the Board or Aldermen and thereafter approved by the Mayor and became effective on _____, 2019; and that said Ordinance remains in full force and effect, having never been altered, amended nor repealed.

Paula Henderson, City Clerk

ORDINANCE COVER SHEET

Bill No. 2019-41

Ordinance No. _____

**“AN ORDINANCE AMENDING THE BOLIVAR MUNICIPAL CODE BY
AMENDING SECTION 225.580 – REGARDING THE CITY’S BURN
REGULATIONS.”**

Filed for public inspection on _____.

First reading _____ In Full; _____ By Title on _____.

Second reading _____ In Full; _____ By Title on _____.

Vote by the Board of Aldermen on _____:

_____ Aye; _____ Nay; _____ Abstain

_____ Approved by the Mayor on _____.

_____ Vetoed by the Mayor on _____.

Board of Aldermen Vote to Override Veto on _____.

_____ Aye; _____ Nay; _____ Abstain

Bill Effective Date: _____.

**“AN ORDINANCE AMENDING THE BOLIVAR MUNICIPAL CODE BY
AMENDING SECTION 225.580 – REGARDING THE CITY’S BURN
REGULATIONS.”**

Be it Ordained by the Board of Aldermen of the City of Bolivar, Missouri, as follows:

Section I: The City Code for the City of Bolivar, Missouri is hereby amended by amending subsections A, H, and K of section 225.580, regarding open burning regulations, with such amended portions of said section to be read as follows:

“Section 225.580: Open Burning Restrictions

A. *Permit Requirements And Material Restrictions For Business/Trade.* Per the Missouri State Department of Natural Resources, any waste generated by a business, trade, industry, salvage or demolition operation shall not be burned without a permit issued by the City of Bolivar. Permits will only be considered for untreated wood wastes only. Wastes that may not be burned include but are not limited to tires, rubber products, hazardous materials, styrofoam, plastics, petroleum-based products, demolition waste, treated wood and any asbestos-containing material. All burning within the City limits of Bolivar, Missouri must be compliant with the following Section and the Department of Natural Resources regulations 10 CSR 10-6.045.

H. *Open Burning in Land-Clearing Operations.* Burning associated with land-clearing operations are not subject to the restrictions of the above-listed yard waste burning in Subsection E of this Code. All land-clearing operational burns must comply with the current State regulation 10 CSR 10-6. All land-clearing operations and burns must be inspected and permitted by the City of Bolivar.

K. *Permits.* Pursuant to Subsections A, D, E, F, and H of this Section 225.580, permits are required for certain burn conditions. All other open-burn allowances as described in this Section do not require a permit from the Fire Department. The City of Bolivar reserves the right to burn in situations that do not require a permit from the Fire Department, but follow all State and national regulations. Any violations of any part of this Section of the City Code will be subject to Subsection L as listed below.”

Section II: In the event that any section, sentence, clause, phrase or portion of this Ordinance is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall continue in full force and effect, to the extent the remainder can be given effect without the invalid portion.

Section III: This Ordinance shall be in full force and effect upon its passage by the Board of Aldermen and approval by the Mayor.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, City Clerk

CERTIFICATION

I, Paula Henderson, do hereby certify that I am the duly appointed and acting City Clerk for the City of Bolivar, Missouri; that the foregoing Ordinance No. _____ was adopted by the Board or Aldermen and thereafter approved by the Mayor and became effective on _____, 2019; and that said Ordinance remains in full force and effect, having never been altered, amended nor repealed.

Paula Henderson, City Clerk

ORDINANCE COVER SHEET

Bill No. 2019-42

Ordinance No. _____

**“AN ORDINANCE AMENDING THE CITY CODE FOR THE CITY OF
BOLIVAR, MISSOURI BY AMENDING THE CITY’S ZONING REGULATIONS
THROUGH ADDITION OF A NEW CODE SECTION 410.255; REGARDING
CULTIVATION, MANUFACTURE AND SALE OF MEDICINAL MARIJUANA.”**

Filed for public inspection on _____.

First reading _____ In Full; _____ By Title on _____.

Second reading _____ In Full; _____ By Title on _____.

Vote by the Board of Aldermen on _____:

_____ Aye; _____ Nay; _____ Abstain

_____ Approved by the Mayor on _____.

_____ Vetoed by the Mayor on _____.

Board of Aldermen Vote to Override Veto on _____.

_____ Aye; _____ Nay; _____ Abstain

Bill Effective Date: _____.

“AN ORDINANCE AMENDING THE CITY CODE FOR THE CITY OF BOLIVAR, MISSOURI BY AMENDING THE CITY’S ZONING REGULATIONS THROUGH ADDITION OF A NEW CODE SECTION 410.255; REGARDING CULTIVATION, MANUFACTURE AND SALE OF MEDICINAL MARIJUANA.”

WHEREAS, the State of Missouri has recently amended its Constitution to provide for the cultivation, sale, and use of marijuana for medicinal purposes; and

WHEREAS, the City of Bolivar, Missouri has determined that zoning regulations for the cultivation and sale of medicinal marijuana is necessary for the safety and welfare of the public; and

WHEREAS, pursuant to the provisions of §§ 410.540-410.560 of the Bolivar Municipal Code, a public hearing has been held as of June 20, 2019 upon the Zoning Administrator’s petition to amend the City’s zoning regulations to provide for the zoning regulation for the cultivation and sale of medicinal marijuana; and

WHEREAS, the Planning and Zoning Commission for the City of Bolivar, Missouri has, following hearing as set forth above, recommended the approval of the amendment of the zoning regulations as set forth herein; and

WHEREAS, the Planning and Zoning Commission for the City of Bolivar, Missouri has reported to the Board of Alderman, following hearing as set forth above, as follows: (i) that the amendment of the zoning regulations as set forth herein is consistent with the intent and purpose of these City of Bolivar’s zoning regulations; and (ii) that the areas to be most affected by the amendment of the zoning regulations as set forth herein are going to be those portions of the City zoned “C-S” Highway Service District; and “C-2” General Commercial District; and “C-3” Central Business District; and “I-1” Light Industrial; and “I-2” Heavy Industrial; and “A-L” Agricultural District – all by reason of increased traffic and social impact (the full extent of which is currently unknown) of these districts being authorized for the legal cultivation, manufacture, or sale of medicinal marijuana, as the case may be; and (iii) that the amendment of the zoning regulations as set forth herein have been made necessary by the amendment of the Constitution of the State of Missouri allowing for the regulated cultivation, manufacture, and sale of medicinal marijuana and therefore by the City’s need to plan and lawfully regulate the zoning districts and standards by which such lawful use may be had for the public safety and welfare.

NOW, THEREFORE, Be it Ordained by the Board of Aldermen of the City of Bolivar, Missouri, as follows:

Section I: The Bolivar Municipal Code is hereby amended by adding a new Section 410.255 for the purpose of codifying the City’s zoning regulations to provide for lawfully regulated use for the cultivation, manufacture, and sale of medicinal marijuana, with such new section to read as follows:

“SECTION 410.255: REGULATIONS FOR MEDICAL MARIJUANA FACILITIES

1. Definitions:

Marijuana - Cannabis indica, Cannabis sativa, and Cannabis ruderalis, hybrids of such species, and any other strains commonly understood within the scientific community to constitute marijuana, as well as seed thereof and resin extracted from the plant and marijuana-infused products.

Marijuana-Infused Products – Products that are infused with marijuana or an extract thereof and are intended for use or consumption other than by smoking, including, but not limited to , edible products, ointments, tinctures, and concentrates.

Medical Marijuana Cultivation Facility – A facility licensed by the State of Missouri to acquire, cultivate, process, store, transport, and sell marijuana to a Medical Marijuana Dispensary Facility, Medical Marijuana Testing Facility, or a Medical Marijuana Infused Products Manufacturing Facility.

Medical Marijuana Dispensary Facility - A facility licensed by the State of Missouri to acquire, store, sell, transport, and deliver marijuana, marijuana-infused products, and drug paraphernalia used to administer marijuana to a Qualifying Patient, a Primary Caregiver, another Medical Marijuana Dispensary Facility, a Medical Marijuana Testing Facility, or a Medical Marijuana Infused Projects Manufacturing Facility.

Medical Marijuana – Infused Products Manufacturing Facility - A facility licensed by the State of Missouri, to acquire, store, manufacture, transport, and sell marijuana-infused products to a Medical Marijuana Dispensary Facility, a Medical Marijuana Test Facility, or to another Medical Marijuana – Infused Projects Manufacturing Facility.

Medical Marijuana Testing Facility – A facility certified by the State of Missouri, to acquire, test, certify, and transport marijuana.

Church(es) / Place(s) of Worship - A Building(s) primarily used for public religious worship and associated religious functions (education, fellowship, etc.), including synagogues and temples.

“Medical Clinic, Dental Clinic, or Health Clinic” as used anywhere in the City of Bolivar’s zoning regulations, will not be interpreted to include medical marijuana facilities.

2. Zoning Districts for Medical Marijuana Dispensary Facilities – Distance Requirements

- A. Subject to distancing requirements as set forth in subsection (B) below, only the following Zoning Districts may be used for the operation of licensed Medical Marijuana Dispensary Facilities:
 - (i) **“C-S”** Highway Service District
 - (ii) **“C-2”** General Commercial District
 - (iii) **“C-3”** Central Business District
- B. A Medical Marijuana Dispensary Facility will not be located within five-hundred (500) feet of a primary or secondary school, day care center, or church. Buffers are to be measured outward from all property lines of the property where the facility is located.

3. Zoning Districts for Medical Marijuana Cultivation Facilities – Distance Requirements

- A. Subject to distance requirements as set forth in subsection (B) below, only the following Zoning Districts may be used for the operation of licensed Medical Marijuana Cultivation Facilities:
 - (i) **“I-1”** Light Industrial; provided that the cultivation operation must be contained within an enclosed area, with a special use permit to be required for outdoor operation of a cultivation facility.
 - (ii) **“I-2”** Heavy Industrial; provided that the cultivation operation must be contained within an enclosed area, with a special use permit to be required for outdoor operation of a cultivation facility.
 - (iii) **“A-L”** Agricultural District
- B. A Medical Marijuana Cultivation Facility will not be located within the following distances from properties designated as follows:
 - (i) Facility will not be located within one-hundred-fifty (150) feet of a residentially zoned property; and
 - (ii) Facility will not be located within one-thousand (1,000) feet from a primary or secondary school, day care center, or church.
 - (iii) Buffers are to be measured outward from all property lines of the property where the facility is located.

4. Zoning Districts for Medical Marijuana – Infused Products Manufacturing Facilities – Distance Requirements

- A. Subject to Subject to distancing requirements as set forth in subsection (B) below, only the following Zoning Districts may be used for the operation of licensed Medical Marijuana – Infused Products Manufacturing Facilities:
- (i) “I-1” Light Industrial
 - (ii) “I-2” Heavy Industrial
- B. A Medical Marijuana – Infused Products Manufacturing Facility will not be located within one-thousand (1,000) feet of a primary or secondary school, day care center, or church. Buffers are to be measured outward from all property lines of the property where the facility is located.

5. Standards for Medical Marijuana Uses

- A. Onsite Usage Prohibited. No marijuana may be smoked, ingested, or otherwise consumed on the premises of a Medical Marijuana Dispensary.
- B. Display of Licenses Required. The medical marijuana license issued by the State of Missouri shall be displayed in an open and conspicuous place on the premises.
- C. Residential Dwelling Units Prohibited. No Medical Marijuana Dispensary shall be located in a building that contains a residence.
- D. Ventilation required. In accordance with any State regulations, medical marijuana businesses shall install and operate a ventilation system that will prevent any odor of marijuana from leaving the premises of the business. No odors shall be detectable by a person with a normal sense of smell outside the boundary of the parcel on which the facility is located.

Section III: In the event that any section, sentence, clause, phrase or portion of this Ordinance is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall continue in full force and effect, to the extent the remainder can be given effect without the invalid portion.

Section II: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor, and subject to protest and the time limitations as set forth in Section 410.570 of the City of Bolivar Municipal Code.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, City Clerk

CERTIFICATION

I, Paula Henderson, do hereby certify that I am the duly appointed and acting City Clerk for the City of Bolivar, Missouri; that the foregoing Ordinance No. _____ was adopted by the Board or Aldermen and thereafter approved by the Mayor and became effective on _____, 2019; and that said Ordinance remains in full force and effect, having never been altered, amended nor repealed.

Paula Henderson, City Clerk

SATURDAY JULY 6TH
BOLIVAR GOLF COURSE

**FIREWORK CELEBRATION 4 PERSON
SCRAMBLE**

9:00 AM SHOTGUN START



\$30 FOR PASS HOLDERS

\$40 NON-PASS HOLDERS

LUNCH & SIDE CONTESTS INCLUDED