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Date: October 2, 2017
To: Comprehensive Planning Committee
From: Allan Torstenson (651-266-6579)
Subject: Zoning Code Chapter 65 Minor Text Amendments

Background

Chapter 65 of the Zoning Code contains all land use-specific definitions and development standards. Chapter 66 contains zoning district-specific regulations. Chapter 65 and all of the use tables in Chapter 66 use consistent terms and organization. This is important for clarity, for ease of use, and to help avoid confusion.

New Article IX, 66.900, Ford Districts just approved by the City Council to be added to Chapter 66 of the Zoning Code has a simplified use table that groups more uses of similar impact under broader use categories and definitions. This is consistent with American Planning Association guidance for simplifying zoning codes as well as with a City goal for making the Zoning Code as simple and easy to read and use as possible. The other use tables in Chapter 66 will be amended to be consistent with the new use table for the Ford districts. Chapter 65 needs to be amended for consistency with the terms and organization of the new Ford district use table. It also needs to be amended to specifically refer to the Ford districts when that is needed to be clear about standards and conditions for uses that apply in Ford districts.

Zoning Code § 61.801 requires periodic review and reevaluation of the Zoning Code. Last March the Zoning Administrator recommended a number of corrections and minor amendments to clarify language in Chapter 65 and bring it up-to-date based on issues that have come up in administering the code and decisions that have been made in several determination of similar use and nonconforming use permit cases. There also needs to be an amendment to bring the standards for cell antennas into conformance with Minnesota's new telecommunications right-of-way user law in Minnesota Statutes § 237.162 and § 237.163.

Public Hearing Testimony

On September 22, 2017, the Planning Commission held a public hearing on the proposed amendments to Chapter 65. The only public testimony received was a letter from a Verizon Wireless representative recommending an amendment to Sec. 65.310, *Antenna, cellular telephone*, to exempt "*small wireless facilities*" in the public right-of-way from local zoning regulation rather than the more limited exemption for "*small wireless facilities*" in the draft Chapter 65 amendments. The Verizon letter noted that the change they recommended would not only exempt small wireless facilities in the public right-of-way from conditional use permit requirements, but also exempt them from zoning code design standards and conditions.

Analysis of Testimony

Minnesota's new telecommunications right-of-way user law in Minnesota Statutes § 237.162 and § 237.163 provides uniform standards for regulating telecommunications facilities within public rights of way. Minnesota Statutes § 237.162, *Public right-of-way, definitions*, defines "*small wireless facilities*" as an antenna that is (or could be) within an enclosure of no more than six cubic feet in volume, with all other associated wireless equipment in aggregate no more than 28 cubic feet in volume.

Minnesota Statutes § 237.163, *Use and regulation of public right-of-way*, in Subd. 2(f), provides that small wireless facilities and structures to support them are a permitted use in a public right-of-way, except that a local unit of government may require a conditional use permit to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or area zoned for single-family residential use or within a historic district. Subd. 3b provides that a new wireless support structure in the public right-of-way can't exceed 50 feet in height, and a support structure that replaces an existing support structure that is higher than 50 feet can't be higher than the existing structure, "unless the local government unit agrees to a greater height, subject to local zoning regulations." It also states that wireless facilities constructed in the right-of-way may not extend more than ten feet above an existing wireless facility support structure.

Minnesota's new telecommunications right-of-way user law in Minnesota Statutes § 237.162 and § 237.163 does not exempt small wireless facilities in the public right-of-way from local zoning regulations. Rather, it provides uniform standards for regulating telecommunications facilities within public rights of way, with which local zoning regulations need to conform. The draft amendment to Zoning Code § 65.310(a) does that with regard to conditional use permits for small wireless facilities. An additional amendment is needed to § 65.310(d) regarding standards and conditions for placement of a small wireless facility on a new freestanding pole in a public right-of-way (see page 9).

Staff Recommendation

Staff recommends that the Comprehensive Planning Committee forward this report and the following amendments to Zoning Code Chapter 65 for minor corrections, simplification, Ford District integration, and bringing Chapter 65 up-to-date, including an additional amendment to bring § 65.310(d) into conformance with Minnesota's new telecommunications right-of-way user law, to the Planning Commission with a recommendation for approval.

Chapter 65. Zoning Code – Land Use Definitions and Development Standards Draft Text Amendments for Minor Corrections, Simplification, and Ford District Integration

NOTE: Existing language to be deleted is shown by ~~strikeout~~. New language to be added is shown by underlining. The additional amendment to § 65.310(d) regarding standards and conditions for placement of a small wireless facility on a new freestanding pole in a public right-of-way (see page 9) is shown with ~~double strikeouts~~ and double underlining. [Drafting notes are in brackets.]

ARTICLE II. 65.100. RESIDENTIAL USES

...

~~Sec. 65.113. Dwelling, three-family.~~

~~A building designed exclusively for or occupied exclusively by no more than three (3) families living independently of each other in three (3) individual dwelling units. [Covered under *multiple-family dwelling*.]~~

~~Sec. 65.114. Dwelling, four-family.~~

~~A building designed exclusively for or occupied exclusively by no more than four (4) families living independently of each other in four (4) individual dwelling units. [Covered under *multiple-family dwelling*.]~~

~~Sec. 65.115. Dwelling, townhouse.~~

~~A one-family dwelling unit, with a private entrance, which is part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having totally exposed front and rear walls to be used for access, light and ventilation.~~

~~*Development standard:*~~

~~In the RT2 townhouse residential district, no more than six (6) townhouse dwelling units shall be attached to form the townhouse structure. [Covered under *multiple-family dwelling*.]~~

~~Sec. 65.113 65.116. Dwelling, multiple-family.~~

A building, or portion thereof, designed exclusively for occupancy by three (3) or more families living independently of each other in individual dwelling units.

Development standards in the RT2 townhouse residential district:

No more than six (6) dwelling units shall be attached to form a townhouse structure, and other types of multiple-family dwellings shall contain no more than four (4) dwelling units.

[Three- and four-family dwellings fall under the more general use category “*multiple-family dwelling*,” defined in § 65.116 as a building with 3 or more dwelling units. § 65.115 defines *townhouse dwelling* as more of a building type than as a use: “... a structure whose dwelling units are attached horizontally in a linear arrangement, and having totally exposed front and rear walls to be used for access, light and ventilation.” Townhouse is a building type that falls under the more general use category “*multiple-family dwelling*.” Therefore, townhouse and 3-4 family dwelling do not have to be separately defined in Chapter 65 and do not have to be separately listed in the use tables. The amendments above delete the separate sections for townhouses and 3-4 family dwellings, and continue to regulate them the same way under § 65.116, *multiple-family dwelling*. This just changes how these are listed, not how they are regulated.]

~~Secs. 65.114- 65.117-65.120. Reserved.~~

Sec. 65.121. Dwelling, carriage house.

An accessory dwelling in a combined residential and garage building, separate from the main building on the lot, located above and/or adjacent to the a detached garage.

Standards and conditions in residential districts:

- (a) The building planned for use as a carriage house dwelling had space originally built to house domestic employees.
- (b) The applicant shall obtain a petition signed by two-thirds (⅔) of the property owners within one hundred (100) feet of the applicant's property line consenting to the carriage house dwelling.
- (c) The applicant shall not reduce the number of existing off-street parking spaces on the property and shall also provide additional off-street parking as required for the carriage house dwelling.
- (d) A site plan and a building plan shall be submitted to the planning commission at the time of application. Carriage house dwellings are exceptions to one (1) main building per zoning lot requirements.

[In some cases part or all of a carriage house dwelling is on the same floor as the garage. The standards and conditions for carriage houses were written to apply to reuse of old accessory dwellings for domestic employees in residential districts, not to construction of new carriage house dwellings such as proposed as part of Ford site redevelopment.]

...

Sec. 65.131. Housing for the elderly.

A multiple-family structure in which eighty (80) percent of ~~e~~ the occupants shall be sixty-two (62) years of age or over, or a multiple-family structure owned and operated by the city public housing agency (PHA) within which over ninety-five (95) percent of the units have no more than one bedroom and are occupied by persons who are eligible for admission to public housing in accordance with current federal regulations.

[Delete an extra "e" in the first line.]

...

Sec. 65.141. Home occupation.

An occupation carried on in a dwelling unit by a resident thereof, provided that the use is limited in extent, incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof.

Standards and conditions:

...

- (b) A home occupation shall not involve the conduct of a general retail or wholesale business, a manufacturing business, a commercial food service requiring a license, a limousine business, ~~or~~ auto service or repair for any vehicles other than those registered to residents of the property, a motor vehicle salvage operation or a recycling processing center, and shall not involve retailing except as noted in paragraph (a).

[A number of complaints have been received about salvaging and recycling out of a residential dwelling. The proposed change would specifically prohibit this.]

...

- (g) There shall be no exterior storage of equipment, supplies or commercial or overweight vehicles as defined in Chapter 151 associated with the home occupation, nor parking of more than one (1) business car, pickup truck or small van, nor any additional vehicles except those for permitted employees identified under paragraph (d).

[This proposed amendment would establish a vehicle threshold size when enforcing this section. Sec. 151.02(9) defines an overweight vehicle as: "Any vehicle, with or without load, which weighs more than six thousand (6,000) pounds or is registered for a gross weight of more than nine thousand (9,000) pounds or is greater than twenty-two (22) feet in length and/or seven and one-half (7½) feet in height. This definition includes but is not limited to semi-trailers, tow trucks, buses, limousines, tractors, construction equipment or similar vehicles. This definition excludes licensed, operable recreational vehicles (RV's)."]

...

Sec. 65.151. Adult care home.

...

Standards and conditions:

...

- (c) In traditional neighborhood development districts, the site shall contain a minimum of ~~one hundred fifty (150)~~ fifty (50) square feet of outdoor community space per resident, consisting of seating areas, yards and/or gardens. ~~Public parks or plazas within three hundred (300) feet of the site may be used to meet this requirement.~~

[This corrects an error - the proposed change was actually adopted but when the congregate living text amendments were written, an older version of the code was used.]

...

Sec. 65.154. Emergency housing facility.

...

Standards and conditions:

See section ~~65.161~~ 65.162, supportive housing facility, standards and conditions (a) – (d).

Sec. 65.155. Foster home.

...

Development Standards and conditions:

In B1, B2-B3 business, and IT-I2 industrial districts, the use shall be within a mixed-use building. In B4 and B5 business districts, the use shall be within a multiple-family building.

[Corrects coding error – these sentences were intended to be in the same paragraph.]

...

Sec. 65.158. Roominghouse

- (1) ~~Any residential structure or dwelling unit, supervised or not, which~~ that provides living and sleeping arrangements for more than four (4) unrelated individuals for periods of one (1) week or longer; or

[Apartment buildings, residential structures that typically provide living and sleeping arrangements for more than four unrelated individuals, are not automatically roominghouses.]

- (2) ~~Any residential structure or dwelling unit that~~ which provides single room occupancy (SRO) housing as defined in CFR section 882.102 to more than four (4) unrelated individuals; or

- (3) ~~Any building housing more than four (4) unrelated individuals that~~ which has any of the following characteristics shall be considered and regulated as a roominghouse:

- a. Rental arrangements are by the rooming unit rather than the dwelling unit.
- b. Rooming unit doors are equipped with outer door locks or chains which require different keys to gain entrance.
- c. Kitchen facilities may be provided for joint or common use by the occupants of more than one (1) rooming unit.
- d. Rooming units are equipped with telephones having exclusive phone numbers.
- e. Rooming units are equipped with individual intercom security devices.
- f. Each rooming unit has a separate assigned mailbox or mailbox compartment for receipt of U.S. mail.

This definition does not include congregate living facilities separately defined in this code.

~~(1) Supportive housing facilities as defined in this code.~~

~~(2) Licensed correctional community residential facilities as defined in this code.~~

~~(3) Sober houses as defined in this code.~~

[Adult care homes, dormitories, emergency housing facilities, fraternities, overnight shelters, and shelters for battered persons are also not roominghouses.]

...

Sec. 65.159. Shareable housing.

A residential structure designed for collaborative living, in which individuals share common facilities and amenities. [A use proposed for Ford districts.]

Sec. 65.160. ~~Sec. 65.159.~~ Shelter for battered persons.

...

Standards and conditions for shelters for battered persons serving more than four (4) adult facility residents and minor children in their care:

- (a) In residential, traditional neighborhood, Ford and OS-B2 business districts, a conditional use permit is required for facilities serving more than four (4) adult facility residents and minor children in their care.

...

- (c) In RL-RT2 residential, traditional neighborhood, Ford, OS-B3 business and IT-I2 industrial districts, the facility shall serve sixteen (16) or fewer adult facility residents and minor children in their care.

...

Sec. 65.161. ~~Sec. 65.160.~~ Sober house.

...

Sec. 65.162. ~~Sec. 65.161.~~ Supportive housing facility.

...

Standards and conditions:

- (a) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from ...
- (b) In RL-RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2 residential, traditional neighborhood, Ford, OS-B3 business and IT-I2 industrial districts, the facility shall serve sixteen (16) or fewer facility residents.
- (c) In residential, ~~and T1 traditional neighborhood~~ and F1 Ford districts, a conditional use permit is required for facilities serving seven (7) or more facility residents.

...

~~Sec. 65.162 — 65.191. Reserved.~~

ARTICLE III. 65.200. CIVIC AND INSTITUTIONAL USES

~~Division 1. 65.210. Educational Facilities~~

Sec. 65.210. ~~Sec. 65.231.~~ Cemetery, mausoleum.

Condition in residential districts:

The use shall have lawfully occupied the property at the time of adoption of this code.

Sec. 65.211. ~~Sec. 65.232.~~ Club, noncommercial.

An organization of persons for special purpose or for the promulgation of sports, arts, sciences, literature, politics or the like, but not operated for profit, excluding churches, synagogues or other houses of worship.

~~Sec. 65.212. School, grades K-12.~~

Development standard:

~~The school shall offer courses in general education, and shall not be operated for profit.~~

[The planning commission decided that a private junior high boarding school operated by a for-profit corporation at 325 Dayton Ave. was similar to a nonprofit school. It is clear what primary and secondary schools are without a separate definition here.]

Secs. ~~65.213~~ 65.212-65.219. Reserved.

Sec. 65.220. College, university, seminary, or similar institution of higher learning.

...

Standards and conditions except in B4--B5 business districts:

- (a) ... To determine compliance with parking requirements ~~in~~, the institution must file an annual report with the planning administrator stating the number of employees, staff and students associated with the institution.

[Remove an extra word, "in."]

...

Sec. 65.221. ~~Sec. 65.211.~~ Day care.

The care of one (1) or more children on a regular basis, for periods of less than twenty-four (24) hours per day, in a place other than the child's own dwelling unit. Day care includes family day care, group family day care and ~~group day care~~ child care centers, as hereinafter defined.

...

- (3) ~~Group day care~~ Child care center. A day care program ~~providing care for more than six (6) children at one time and~~ licensed by the state or the city as a ~~group day~~ child care center. ~~Group day~~ Child care centers includes programs for children known as nursery schools, day nurseries, child care centers, play groups, day care centers for school age children, after school programs, infant day care centers, cooperative day care centers and Head Start programs.

Standards and conditions:

- (a) In RL--R4 residential districts, ~~group day care~~ a child care center ~~for more than twelve (12) children at one time~~ shall be located in a nonresidential structure formerly occupied by a church, school or similar facility. In industrial districts, ~~group day care~~ a child care center shall be accessory to a principal use permitted in the district.

...

[In order to bring the code into compliance with current state licensing standards, a group day care facility is proposed to be changed to a child care center. Under current state license rules any facility meeting the definition of a child care center needs to be licensed regardless of the number of children at the facility. Therefore, any reference to the number of children at the child care center should be eliminated.]

Secs. 65.222-65.232. Reserved.

~~Division 2. 65.230. Social, Cultural, and Recreational Facilities~~

...

Sec. 65.236. Religious institution.

A church, chapel, synagogue, temple or other similar place of worship, along with uses directly associated with the place of worship such as a rectory, parsonage, convent, monastery, and religious retreat.

~~Division 3. 65.250. Religious Institutions.~~

Sec. 65.271. Rectory, parsonage.

Condition:

~~The use shall be associated with a church, chapel, synagogue, temple or other similar house of worship.~~

~~Sec. 65.272. Convent, monastery, religious retreat.~~

~~Condition in residential districts:~~

~~The use shall be associated with a church, chapel, synagogue, temple or other similar house of worship.~~

ARTICLE IV. 65.300. PUBLIC SERVICES AND UTILITIES

Sec. 65.310. Antenna, cellular telephone.

A device consisting of metal, carbon fiber, or other electromagnetically conductive rods or elements, usually arranged in a circular array on a single supporting pole or other structure, and used for the transmission and reception of radio waves in wireless telephone communications.

Standards and conditions:

- (a) In residential, traditional neighborhood, Ford and business districts, a conditional use permit is required for cellular telephone antennas on a building less than forty-five (45) feet high or on a freestanding pole, except for existing utility poles or replacement utility poles required for structural reasons that match the size and appearance of the existing utility pole it replaces. In residential and traditional neighborhood districts, existing utility poles or replacement utility poles to which cellular telephone antennas are attached shall be at least sixty (60) feet high unless the antennas are located within a canister of a maximum three (3) feet in height and eighteen (18) inches in diameter that is colored to blend with the pole, in which case the pole shall be at least twenty-five (25) feet high. Conditional use permit review for such antennas will take into account not only the request made by the application, but also any future eligible facility modifications allowed under 47 CFR § 1.40001, such as antennas of a more obtrusive design or placement than the subject application. A conditional use permit is not required for any eligible facility modification allowed under 47 CFR § 1.40001, nor for any "small wireless facility" placement in the public right-of-way that meets the requirements of Minnesota Statutes 237.162 and 237.163 and is not on a new pole in a one-family residential district.

[The first two additions clarify that a new pole can be considered the same as an existing utility pole when it matches what had been the existing pole, but requires replacement solely for structural reasons, which is a very common situation that would seem to meet the existing code's intent. The third addition allows for small canisters containing antennas to be placed upon light poles, as has occurred numerous times downtown and recently on/near college campuses. The aesthetic impact in those situations is very minimal. This would not affect applications in the right-of-way because of the fourth addition. The fourth addition refers to MN Revised Statutes due to a new law that makes "small wireless facilities" (by their definition: generally 6 cubic feet or less in size, of whatever appearance) a permitted use in the right-of-way for all collocations on existing poles, plus for erecting new poles less than 50 feet high in ROWs that are not in a SF residential or historic district.]

- (b) In residential, traditional neighborhood, Ford and OS-B3 and B5 business districts, the antennas shall not extend more than fifteen (15) feet above the structural height of the structure to which they are attached. In B4 business and industrial districts, the antennas shall not extend more than forty (40) feet above the structural height of the structure to which they are attached.
- (c) For antennas proposed to be located on a building less than forty-five (45) feet high in residential, traditional neighborhood, Ford and business districts, or on a new freestanding pole in residential, traditional neighborhood, Ford and business districts, the applicant shall demonstrate that the proposed antennas cannot be accommodated on an existing freestanding pole or an existing structure at least forty-five (45) feet high within one-half (½) mile radius of the proposed antennas due to one (1) or more of the following reasons:
- (1) The planned equipment would exceed the structural capacity of the existing pole or structure.
 - (2) The planned equipment would cause interference with other existing or planned equipment on the pole or structure.

- (3) The planned equipment cannot be accommodated at a height necessary to function reasonably.
- (4) The owner of the existing pole, structure or building is unwilling to co-locate an antenna.
- (d) In residential, traditional neighborhood, Ford and business districts, cellular telephone antennas to be located on a new freestanding pole are subject to the following standards and conditions:
 - (1) The freestanding pole shall not exceed seventy-five (75) feet in height, unless the applicant demonstrates that the surrounding topography, structures, or vegetation renders a seventy-five-foot pole impractical. Freestanding poles may exceed the above height limit by twenty-five (25) feet if the pole is designed to carry two (2) antennas. A new freestanding pole in the public right-of-way shall not exceed a height of fifty (50) feet.
 - (2) Antennas shall not be located in a required front or side yard and, except for “small wireless facility” placement in the public right-of-way that meets the requirements of Minnesota Statutes 237.162 and 237.163, shall be set back one (1) times the height of the antenna plus thirty-eight (38) feet from the nearest residential building
 - (3) ~~The antennas shall be designed where possible to blend into the surrounding environment through the use of color and camouflaging architectural treatment. Drawings or photographic perspectives showing the pole and antennas shall be provided to the planning commission to determine compliance with this provision.~~
 - (4) Except for “small wireless facility” placement in the public right-of-way that meets the requirements of Minnesota Statutes 237.162 and 237.163, in residential, ~~and traditional neighborhood and Ford~~ districts, the pole shall be on institutional use property at least one (1) acre in area; and in business districts, the zoning lot on which the pole is located shall be within contiguous property with OS or less restrictive zoning at least one (1) acre in area.

[New language needed for conformance with Minnesota’s new telecommunications right-of-way user law in Minnesota Statutes § 237.162 and § 237.163.]

...

- (h) Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary, it shall be permitted and regulated as an accessory building, section 63.500, ~~and screened from view by landscaping where appropriate.~~
- (i) In residential, traditional neighborhood, business, and Ford districts, antennas, support structures and transmitting, receiving and switching equipment shall blend into the surrounding environment to the greatest extent possible through the use of color, camouflaging architectural treatment, and landscaping where appropriate. Antennas on a structure shall be aesthetically compatible with the structure. Scaled drawings or photographic perspectives showing the antenna, pole and equipment building and a landscape and landscape maintenance plan shall be submitted with the permit application showing compliance with this provision.
- (j) Cellular telephone antennas, poles and supporting structures and equipment buildings that are no longer used for cellular telephone service shall be removed within one (1) year of nonuse.

[There are currently only appearance standards for cellular telephone antennas on freestanding poles and not for those on structures. Since both types of antennas can be incompatible with the surroundings, the proposed change would delete appearance standards from freestanding poles and add an appearance standards paragraph that address both freestanding antennas and antennas on structures.]

...

Sec. 65.320. Electric transformer or gas regulator station.

Standards and conditions in Ford and business districts.

There may be service yards, but there shall be no storage yards.

Sec. 65.321. Municipal building or use.

Development standard in residential, traditional neighborhood, Ford and OS—B4 business districts:

There shall be no outdoor storage.

Sec. 65.322. Utility or public service building.

Utility and public service buildings include such things as water and sewage pumping stations and telephone exchange buildings.

Standards and conditions in residential, traditional neighborhood, Ford and OS—B4 business districts:

- (a) Except for off-street parking and loading, the use shall be completely enclosed within a building. There shall be no outside storage.
- (b) Except in business districts, the application shall include substantiating evidence that operating requirements necessitate locating the use within the district in order to serve the immediate vicinity.

...

ARTICLE V. 65.400. COMMERCIAL USES

Division 1. 65.410. Offices Office, Retail and Service Uses

Sec. 65.411. 65.412. General Professional office, studio.

General office and studio uses Professional offices include, but are not limited to, administrative, insurance, real estate, and sales offices; artist and photographer studios; and offices of professionals such as accountants, architects, attorneys, auditors, bookkeepers, engineers and financial planners.

[This simplifies the code by grouping administrative offices, professional offices, artist and photographer studios, and insurance, real estate and sales offices under a single, broader use category. These are similar uses of similar impact that are permitted in the same zoning districts. There is no need to list them separately in the use tables.]

~~Division 2. 65.450. Medical Facilities~~

~~**65.451. Clinic, Medical or dental.**~~

~~An establishment where human patients who are not lodged overnight are admitted for examination and/or treatment by a group of physicians, dentists or similar professionals.~~

[The ordinarily accepted meaning of these terms is so commonly understood that the separate definition for this is not necessary, and this section can be deleted. *Medical or dental clinic or laboratory* is listed in the definition of “general service business” below, and doesn’t have to be separately listed.]

~~Division 3. 65.500. Retail Sales and Services~~

Sec. 65.412. 65.510. General retail.

General retail sales include the retail sale of products to the general public, sometimes with provision of related services, and produce minimal off-site impacts. General retail sales include but are not limited to the following:

- (a) Antiques and collectibles store;
- (b) Art gallery;
- (c) Bakery;
- (de) Bicycle sales and repair;

- (~~ed~~) Book store, music store;
- (f) Butcher shop;
- (g) Catering;
- (~~h-e~~) Clothing and accessories;
- (i) Deli;
- (j~~f~~) Drugstore, pharmacy;
- (k~~g~~) Electronics sales and repair;
- (l~~h~~) Florist;
- (m) Food and related goods sales;
- (n~~i~~) Jewelry store;
- (o~~j~~) Hardware store;
- (p) Liquor store;
- (q~~k~~) News stand, magazine sales;
- (r~~l~~) Office supplies;
- (s~~m~~) Pet store;
- (t~~n~~) Photographic equipment, film developing;
- (u~~o~~) Stationery store;
- (w~~p~~) Picture framing; and
- (x~~q~~) Video store.

Standards and conditions:

In traditional neighborhood districts, a conditional use permit is required for new construction covering more than twenty thousand (20,000) square feet of land to ensure size and design compatibility with the particular location.

[Adding bakery, catering, deli, food and related goods sales, and liquor store to the definition of *general retail* simplifies the code and use tables by eliminating the need to separately list these similar uses of similar impact.]

Sec. 65.413. ~~65.533.~~ Service business, general.

Service businesses include provision of services to the general public that produce minimal off-site impacts. Service businesses include but are not limited to the following:

- (a) Bank, credit union;
- (b~~a~~) Barber and beauty shops;
- (c~~b~~) Dry-cleaning pick-up station;
- (d) Food shelf;
- (e~~e~~) Interior decorating/upholstery;
- (f) Laundromat, self-service;
- (g~~d~~) Locksmith;
- (h~~e~~) Mailing and packaging services;
- (i) Massage center;
- (j) Medical or dental clinic or laboratory;

- (kf) Photocopying;
- (l) Post office;
- (mg) Radio and television service and repair;
- (nh) Shoe repair;
- (o) Small appliance repair;
- (pi) Tailor shop; and
- (qj) Watch repair, other small goods repair.

(Ord 15-5, § 2, 2-5-15)

[Adding bank, credit union, food shelf, self-service laundromat, massage center, medical or dental clinic or laboratory, post office, and small appliance repair to the definition of *general service business* simplifies the code and use tables by eliminating the need to separately list these similar uses of similar impact.]

Sec. 65.414. ~~65.534~~. Service business with showroom or workshop.

...

Secs. 65.415-65.500. Reserved.

Sec. 65.501. ~~65.511~~. Alternative financial establishment.

...

Sec. 65.502. Animal boarding, animal shelter.

An establishment for the keeping and care of domestic pets for more than 24 hours by a person other than the owner of the animal and not associated with a veterinary clinic.

Standards and conditions:

- (a) In traditional neighborhood districts, all activity shall take place within completely enclosed buildings except for the walking of dogs.
- (b) An outdoor kennel or exercise/relief area shall be entirely enclosed with a fence and the animals shall not be kept outdoors between the hours of 10 p.m. and 6 a.m. The property where the use is located shall not adjoin residentially zoned property.

Sec. 65.503. Animal day care.

An establishment providing exercising and socializing for domestic pets on a daily basis for less than twenty-four (24) hours per day by a person other than the owner of the animal.

Standards and conditions:

- (a) In traditional neighborhood, Ford and B3-B4 business districts, all activity shall take place within completely enclosed buildings except for the walking of dogs.
- (b) In industrial and B5 business districts, an outdoor exercise/relief area shall be entirely enclosed with a fence. The property where the use is located shall not adjoin residentially zoned property.

[Standards for *animal boarding* and *animal day care* added to reflect Planning Commission decisions in several determination of similar use and nonconforming use permits in the following zoning files: #07-064978, #16-064802, #12-109252, #13-239519, #06-273087, #10-506183, #10-900721, and #12-215800. Both animal day care and animal boarding require a Saint Paul license under Chapter 348 that establishes minimum standards for the safekeeping of animals, noise, odors, sanitation, external effects, and inspections, and that requires a neighbor petition.]

Sec. 65.504. ~~Sec. 65.411~~. Artist's Studio.

A place designed to be used, or used as, both a dwelling place and a place of work by an artist, artisan or craftsperson, including persons engaged in the application, teaching or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture and writing.

[While *artist's studio* is proposed to be included in the definition of "*general office, studio*" above, a broader land use category that would be listed in the use tables, this separate definition of *artist studio* is still needed to state that an *artist's studio* may be used as a dwelling place by the artist.]

...

Secs. 65.505-65.511. Reserved.

...

Sec. 65.513. Drive-through sales and services, primary principal and accessory.

...

Secs. 65.516-65.517. Reserved Food and related goods sales.

~~Retail sales of food and related goods include the following:~~

- ~~(a) Grocery store, supermarket;~~
- ~~(b) Butcher shop;~~
- ~~(c) Bakery;~~
- ~~(d) Candy store;~~
- ~~(e) Produce shop, or other specialty food shop;~~
- ~~(f) Retail food establishment; and~~
- ~~(g) Catering.~~

~~Standards and conditions:~~

~~See section 65.510, general retail.~~

~~[Food and related goods sales is listed under general retail above.]~~

Sec. 65.517. Food shelf.

~~A place where groceries are provided at no cost to individuals in emergency situations and where such groceries are consumed off site.~~

~~[Food shelf is listed under general service business above. A separate definition for this is not necessary.]~~

...

Sec. 65.521. 65.452. Hospital.

...

Sec. 65.521. Liquor store.

~~Standards and conditions:~~

~~See section 65.510, general retail.~~

~~[Liquor store is listed under general retail above.]~~

Sec. 60.522. Massage center.

~~A building or portion of a building which is used for offering "massage," defined as the rubbing, stroking, kneading, tapping or rolling of the body, for the purposes of pleasure, relaxation, physical fitness or beautification, offered for a fee or other valuable consideration. This definition shall include any building,~~

~~room, structure, place or establishment used by the public, other than a hospital, sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings, duly licensed under the provisions of Minnesota Statutes, sections 144.50 through 144.703, inclusive, where nonmedical and nonsurgical manipulation exercises or massages are practiced upon the human body for a fee or other valuable consideration by anyone not duly licensed by the state to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, with or without the use of mechanical, therapeutic or bathing devices, or any room or rooms from which a massage therapist is dispatched by telephone or otherwise for the purpose of giving a massage.~~

[This definition is unnecessary, and this section can be deleted. *Massage center* is listed in the definition of “*general service business*” above, and doesn’t have to be separately listed in the use tables.]

Secs. ~~65.523~~, 65.522-65.524. Reserved.

...

Sec. ~~65.532~~-65.534. Reserved.

Sec. 65.535. Tobacco products shop.

A retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, electronic cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

[The City Council decided that the sale of electronic cigarettes should be added to the list of products that require a license for the sale of tobacco under Chapter 324. DSI has determined that the sale of electronic cigarettes is included in the zoning code definition of a tobacco products shop. To reinforce that position and to be consistent with the license ordinance, staff proposes that electronic cigarettes be added to the definition of a tobacco products shop.]

...

Sec. 65.536. ~~65.453~~. Veterinary clinic.

...

Division 2 ~~Division 4~~. 65.600. Food and Beverages

Sec. 65.610. Bar.

An establishment that serves wine, beer, or intoxicating liquor for consumption on the premises any time between midnight and 2:00 a.m.

Standards and conditions in traditional neighborhood and B2 community business districts:

In traditional neighborhood, Ford and B2 community business districts, a conditional use permit is required for a bar of more than five thousand (5,000) square feet in floor area to ensure size and design compatibility with the particular location

...

Sec. 65.612. Coffee kiosk.

...

Standards and conditions:

See section 65.~~513~~710, drive-through sales and services, ~~primary~~ principal and accessory.

Sec. 65.613. Coffee shop, tea house.

An establishment engaged principally in the sale of coffee, tea, and other ~~nonalcoholic nonalcoholic~~ beverages for consumption on the premises or for carryout, which may also include the sale of a limited number of food items as allowed under a limited food menu license ~~restaurant C license~~.

[Spelling error. The city no longer licenses food establishments, the state does. The state licenses for food establishments are:

- **Limited Food Menu** - prepackaged food that receives heat treatment and is served in the package, continental breakfast, soft drinks, coffee, nonalcoholic beverages.
- **Small Establishment** - food service with no salad bar, equipment not exceeding: one deep fat fryer; one grill; two hot holding containers; microwaves, or service of dipped ice cream/soft serve frozen desserts, or breakfast service in a bed and breakfast operation, or boarding establishments. *Establishments which do not provide catering service and which meet "Medium Establishment" equipment criteria but have a total seating capacity of 50 or less are "Small Establishments."*
- **Medium Establishment** - food service using a range, oven, steam table, salad bar, or salad prep area, more than one deep fat fryer or grill, more than two hot holding containers, or involving catering.
- **Large Establishment** - food service that meets the full menu definition and seats more than 175 people, serves a full menu selection an average of five or more days per week or caters 500 or more meals per day.]

...

Sec. 65.614. Restaurant.

A public eating place which serves a substantial portion of its food for consumption at tables or counters located on the premises. This term shall include a deli with seating for more than twelve (12) customers, ~~but not be limited to, an establishment known as a café, smorgasbord, diner or similar business. Any facilities for carry-out shall be clearly subordinate to the principal use of providing foods for consumption on the premises.~~

Standards and conditions:

- (a) In T2-T3 traditional neighborhood districts, a conditional use permit is required for establishments of more than fifteen thousand (15,000) square feet in floor area to ensure size and design compatibility with the particular location.
- (b) Outdoor restaurants shall be accessory to an indoor restaurant or a farmers market.

Sec. 65.615. Reserved. Restaurant, carry-out, deli.

~~A retail food service business, including delis, which sells ready-to-eat foods, usually in bulk quantities, primarily for consumption off the premises. A carry-out restaurant that has more than limited seating (twelve (12) or fewer seats), or seventy-five (75) square feet of patron area, shall be deemed to be a restaurant for zoning purposes.~~

~~*Standards and conditions:*~~

~~See section 65.614, restaurant.~~

[Grocery stores often have a deli, so *deli* is proposed to be listed along with *food and related goods sales* under *general retail*. § 65.615, *restaurant, carry-out, deli*, just refers to standards and conditions is § 65.614, *restaurant*. Language in § 65.615 about a carry-out restaurant/deli being a restaurant if it has a certain amount of seating or patron area is proposed to be moved to the definition of *restaurant* above, and then § 65.615 can be deleted and *restaurant, carry-out, deli* would not need to be separately listed in the use tables. Carry-out restaurants with less seating or patron area would either be a deli or a fast-food restaurant.]

Sec. 65.616. Restaurant, fast-food.

A public eating place, ~~other than a carry-out restaurant~~, designed for rapid food delivery to customers seated in their automobiles or from a counter or drive-through window, with minimal personal service and

for consumption on or off the premises. All restaurants with drive-through service are considered fast-food restaurant.

Any restaurant whose design or principal method of operation includes four (4) or more of the following characteristics shall be deemed a fast-food restaurant for zoning purposes:

...

~~Sec. 65.617. Restaurant, outdoor.~~

~~Development standard:~~

~~The use shall be accessory to an indoor restaurant or a farmers' market.~~

[Outdoor restaurants are permitted in the same districts as restaurants. Language in § 65.617, *restaurant, outdoor*, about an outdoor restaurant needing to be accessory to an indoor restaurant or a farmers market is proposed to be moved to the standards and conditions for a *restaurant*, and then § 65.617 can be deleted and *outdoor restaurant* would not need to be separately listed in the use tables.]

Division 3 ~~Division 5.~~ 65.640. Commercial Recreation, Entertainment and Lodging

...

Sec. 65.644. Indoor recreation.

Bowling alley, billiard hall, indoor archery range, indoor tennis courts, racquet ball and hand ball; ~~b0;~~ courts, dance hall, electronic game room, indoor skating rink, and similar forms of indoor commercial recreation.

~~Development standard:~~

~~(a) The building in which the use is located shall be at least one hundred (100) feet from the closest point of any residential lot in a residential district.~~

~~Additional Standards and conditions in traditional neighborhood districts:~~

~~(a)~~ Primary access shall be from an arterial or collector street.

~~(b)~~ Floor area shall not exceed 40,000 square feet.

[Correct typo in definition. Delete setback requirement from a residential lot to be consistent with other similar uses such as bingo hall and health/sports club that do not have such a setback requirement, and in light of BZA case experience, The Trapped Puzzle Room, 561 S. Snelling, received a variance from the 100 foot required setback from a residential lot, which seemed unnecessary.]

...

Division 4 ~~Division 6.~~ 65.660. Adult Entertainment

...

Division 5 ~~Division 7.~~ 65.700. Automobile Services

...

Sec. 65.703. Auto service station.

...

Standards and conditions:

(a) The construction and maintenance of all driveways, curbs, sidewalks, pump islands or other facilities shall be in accordance with current city specifications. ~~Such specifications shall be developed by the planning administrator, traffic engineer and city fire marshal, and shall be approved by the planning commission, and filed with the city clerk.~~

[Technical specifications for auto service stations are established by the various reviewing departments based on current rules and standard operating practices and are imposed at part of the site plan review process.]

...

Sec. 65.707. Car wash, detailing.

[The Zoning Administrator considers an auto detailing operation to be the same as a car wash.]

...

Division 6 ~~Division 8~~. 65.730. Parking Facilities

...

Division 7 ~~Division 9~~. 65.750. Transportation

...

Sec. 65.762. Railroad right-of-way.

Development standard:

In residential, traditional neighborhood, Ford, and OS-B3 business districts, there shall be no terminal freight facilities, transfer or storage tracks.

Division 8 ~~Division 10~~. 65.770. Limited Production, Processing and Storage

Sec. 65.771. Agriculture.

...

- (j) Accessory buildings shall not exceed an area greater than ten (10) percent of the parcel or one thousand (1000) square feet, whichever is greater. Temporary structures, not exceeding one hundred eighty (180) days per year, such as hoopouses, cold frames, and similar structures located above gardening plots and being used to extend the growing season are permitted. A building permit is required for any temporary structure covering an area greater than ~~one hundred twenty (120)~~ two hundred (200) square feet.

[The threshold for requiring a building permit under the building code for an accessory structure has changed from 120 square feet to 200 square feet, necessitating this change.]

...

ARTICLE VII. 65.900. ACCESSORY USES

...

Sec. 65.915. Hot tub, outdoor.

Standards and conditions:

All yards containing hot tubs shall be secured as required in section 65.923(d)(e) or shall have a cover, which shall be locked when the hot tub is not in use. A hot tub shall not be located in a required front or side yard, less than three (3) feet from any lot line, or in a public easement. ~~A hot tub shall be located at least three (3) feet away from any lot line.~~

[Moved from the swimming pool regulations under Sec. 65.923.]

...

Sec. 66.922. Support services in housing for the elderly.

Support services within elderly housing as defined in section ~~65.131~~ ~~65.123~~ including limited food service, beauty salon and related goods sales areas.

Development standard in residential districts:

Support service areas shall not exceed five (5) percent of designated community room area.

[Correct the wrong citation. The development standard is intended to apply in residential districts where commercial uses are more limited. It is not intended to apply in mixed-use and business districts where these uses are otherwise permitted.]

Sec. 65.923. Swimming pool, outdoor.

~~A pool or tub constructed either above or below grade and having a capacity of five thousand (5,000) or more gallons. Any structure designed, constructed or intended to be used for outdoor swimming, either above or below grade, with a capacity of twenty-four (24) or more inches deep and having one hundred fifty (150) or more square feet of surface area.~~

[To be consistent with the changes made to Sec. 34.07 under Ord. 15-49.]

Standards and conditions:

- (a) There shall be a distance of not less than ten (10) feet between the adjoining property line and the outside of the swimming pool wall for aboveground pools. For in-ground swimming pools, there shall be a distance of not less than five (5) feet between the adjoining property line and the outside of the pool wall.
- (b) There shall be a distance of not less than four (4) feet between the outside swimming pool wall and any building located on the same lot.
- (c) A swimming pool shall not be located in a required front or side yard, less than ten (10) feet from any street or alley right-of-way, or in a public easement.
- (d) ~~A hot tub shall not be located in a required front or side yard, less than three (3) feet from any lot line, or in a public easement.~~ [Belongs under Sec. 65.915, *hot tub, outdoor.*]
- (e) All yards of one- and two-family structures containing swimming pools shall be enclosed by an obscuring fence or wall not less than four (4) feet in height, maintained in a professional state of maintenance or repair, and shall be constructed such that no openings, holes or gaps in the fence or wall exceed four (4) inches in any dimension except for openings protected by a door or gate. All yards of residential structures of three (3) or more units and commercial structures containing swimming pools shall be enclosed by an obscuring fence not less than five (5) feet in height, maintained in a professional state of maintenance or repair, and shall be constructed such that no openings, holes or gaps in the fence or wall exceed four (4) inches in any dimension except for openings protected by a door or gate. Sidewalls greater than four (4) or five (5) feet in height on an above ground outdoor swimming pool are not a substitute for the appropriate fence or wall. The gates shall be of a self-closing and self-latching type, with the latch on the inside of the gate, not readily available for children to open. Gates shall be capable of being securely locked when the pool is not in use.

[To be consistent with the changes made to Sec. 34.08(12) under Ord. 15-49.]

237.162 PUBLIC RIGHT-OF-WAY; DEFINITIONS.

Subdivision 1. **Generally.** The terms used in sections 237.162 and 237.163 have the meanings given to them in this section.

Subd. 2. **Local government unit.** "Local government unit" means a county, home rule charter or statutory city, town, or the Metropolitan Council.

Subd. 3. **Public right-of-way.** "Public right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units.

A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

Subd. 4. **Telecommunications right-of-way user.** (a) "Telecommunications right-of-way user" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for providing wireless service, or transporting telecommunications or other voice or data information.

(b) A cable communication system defined and regulated under chapter 238, and telecommunications activities related to providing natural gas or electric energy services, a public utility as defined in section 216B.02, a municipality, a municipal gas or power agency organized under chapter 453 or 453A, or a cooperative electric association organized under chapter 308A, are not telecommunications right-of-way users for the purposes of this section and section 237.163, except to the extent these entities are offering wireless services.

Subd. 5. **Excavate.** "Excavate" means to dig into or in any way remove, physically disturb, or penetrate a part of a public right-of-way.

Subd. 6. **Obstruct.** "Obstruct" means to place a tangible object in a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Subd. 7. **Right-of-way permit.** "Right-of-way permit" means a permit to perform work in a public right-of-way, whether to excavate or obstruct the right-of-way.

Subd. 8. **Manage the public right-of-way.** "Manage the public right-of-way" means the authority of a local government unit to do any or all of the following:

- (1) require registration;
- (2) require construction performance bonds and insurance coverage;
- (3) establish installation and construction standards;
- (4) establish and define location and relocation requirements for equipment and facilities;
- (5) establish coordination and timing requirements;

(6) require telecommunications right-of-way users to submit, for right-of-way projects commenced after May 10, 1997, whether initiated by a local government unit or any telecommunications right-of-way user, project data reasonably necessary to allow the local government unit to develop a right-of-way mapping system, such as a geographical information mapping system;

(7) require telecommunication right-of-way users to submit, upon request of a local government unit, existing data on the location of the user's facilities occupying the public right-of-way within the local government unit. The data may be submitted in the form maintained by the user and in a reasonable time after receipt of the request based on the amount of data requested;

(8) establish right-of-way permitting requirements for street excavation and obstruction;

(9) establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation, or construction; and

(10) impose reasonable penalties for unreasonable delays in construction.

Subd. 9. Management costs or rights-of-way management costs. (a) "Management costs" or "rights-of-way management costs" means the actual costs a local government unit incurs in managing its public rights-of-way, and includes such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way or small wireless facility permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way or small wireless facility permits.

(b) Management costs do not include:

(1) payment by a telecommunications right-of-way user for the use of the public right-of-way;

(2) unreasonable fees of a third-party contractor used by a local government unit as part of managing its public rights-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for a local government unit; or

(3) the fees and cost of litigation relating to the interpretation of this section or section 237.163 or any ordinance enacted under those sections, or the local unit of government's fees and costs related to appeals taken pursuant to section 237.163, subdivision 5.

Subd. 10. Collocate. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

Subd. 11. Small wireless facility. "Small wireless facility" means:

(1) a wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

(ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or

(2) a micro wireless facility.

Subd. 12. **Utility pole.** "Utility pole" means a pole that is used in whole or in part to facilitate telecommunications or electric service.

Subd. 13. **Wireless facility.** (a) "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

(1) equipment associated with wireless service;

(2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and

(3) a small wireless facility.

(b) "Wireless facility" does not include:

(1) wireless support structures;

(2) wireline backhaul facilities; or

(3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

Subd. 14. **Micro wireless facility.** "Micro wireless facility" means a small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

Subd. 15. **Wireless service.** "Wireless service" means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).

Subd. 16. **Wireless support structure.** "Wireless support structure" means a new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

Subd. 17. **Wireline backhaul facility.** "Wireline backhaul facility" means a facility used to transport communications data by wire from a wireless facility to a communications network.

History: 1997 c 123 s 3; 2017 c 94 art 9 s 1-11

237.163 USE AND REGULATION OF PUBLIC RIGHT-OF-WAY.

Subdivision 1. **Legislative finding.** The legislature finds, and establishes the principle that, it is in the state's interest that the use and regulation of public rights-of-way be carried on in a fair, efficient, competitively neutral, and substantially uniform manner, while recognizing such regulation must reflect the distinct engineering, construction, operation, maintenance and public and worker safety requirements, and standards applicable to various users of public rights-of-way. Because of the potential for installation by telecommunication companies of multiple and competing facilities within the public rights-of-way, the legislature finds it is necessary to enact the provisions of this section and section 237.162 to specifically authorize local government units to regulate the use of public rights-of-way by telecommunications right-of-way users.

Subd. 2. **Generally.** (a) Subject to this section, a telecommunications right-of-way user authorized to do business under the laws of this state or by license of the Federal Communications Commission may construct, maintain, and operate small wireless facilities, conduit, cable, switches, and related appurtenances and facilities along, across, upon, above, and under any public right-of-way.

(b) Subject to this section, a local government unit has the authority to manage its public rights-of-way and to recover its rights-of-way management costs. Except as provided in subdivisions 3a, 3b, and 3c, the authority defined in this section may be exercised at the option of the local government unit and is not mandated under this section. A local government unit may, by ordinance:

(1) require a telecommunications right-of-way user seeking to excavate or obstruct a public right-of-way for the purpose of providing telecommunications services to obtain a right-of-way permit to do so and to impose permit conditions consistent with the local government unit's management of the right-of-way;

(2) require a telecommunications right-of-way user using, occupying, or seeking to use or occupy a public right-of-way for the purpose of providing telecommunications services to register with the local government unit by providing the local government unit with the following information:

(i) the applicant's name, gopher state one-call registration number under section 216D.03, address, and telephone and facsimile numbers;

(ii) the name, address, and telephone and facsimile numbers of the applicant's local representative;

(iii) proof of adequate insurance; and

(iv) other information deemed reasonably necessary by the local government unit for the efficient administration of the public right-of-way; and

(3) require telecommunications right-of-way users to submit to the local government unit plans for construction and major maintenance that provide reasonable notice to the local government unit of projects that the telecommunications right-of-way user expects to undertake that may require excavation and obstruction of public rights-of-way.

(c) A local government unit may also require a telecommunications right-of-way user that is registered with the local government unit pursuant to paragraph (b), clause (2), to periodically update the information in its registration application.

(d) Notwithstanding sections 394.34 and 462.355, or any other law, a local government unit must not establish a moratorium with respect to:

(1) filing, receiving, or processing applications for right-of-way or small wireless facility permits; or

(2) issuing or approving right-of-way or small wireless facility permits.

(e) A telecommunications right-of-way user may place a new wireless support structure or collocate small wireless facilities on wireless support structures located within a public right-of-way, subject to the approval procedures under this section and, for collocation on wireless support structures owned by a local government unit, the reasonable terms, conditions, and rates set forth under this section. A local government unit may prohibit, regulate, or charge a fee to install wireless support structures or to collocate small wireless facilities only as provided in this section.

(f) The placement of small wireless facilities and wireless support structures to accommodate small wireless facilities are a permitted use in a public right-of-way, except that a local government unit may require a person to obtain a special or conditional land use permit to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or area zoned for single-family residential use or within a historic district established by federal or state law or city ordinance as of the date of application for a small wireless facility permit. This paragraph does not apply to areas outside a public right-of-way that are zoned and used exclusively for single-family residential use.

Subd. 3. Restoration. (a) A telecommunications right-of-way user, after an excavation of a public right-of-way, shall provide for restoration of the right-of-way and surrounding areas, including the pavement and its foundation, in the same condition that existed before the excavation. Local government units that choose to perform their own surface restoration required as a result of the excavation may require telecommunications right-of-way users to reimburse the reasonable costs of that surface restoration. Restoration of the public right-of-way must be completed within the dates specified in the right-of-way permit, unless the permittee obtains a waiver or a new or amended right-of-way permit.

(b) If a telecommunications right-of-way user elects not to restore the public right-of-way, a local government unit may impose a degradation fee in lieu of restoration to recover costs associated with a decrease in the useful life of the public right-of-way caused by the excavation of the right-of-way by a telecommunications right-of-way user.

(c) A telecommunications right-of-way user that disturbs uncultivated sod in the excavation or obstruction of a public right-of-way shall plant grasses that are native to Minnesota and, wherever practicable, that are of the local eco-type, as part of the restoration required under this subdivision, unless the owner of the real property over which the public right-of-way traverses objects. In restoring the right-of-way, the telecommunications right-of-way user shall consult with the Department of Natural Resources regarding the species of native grasses that conform to the requirements of this paragraph.

Subd. 3a. Small wireless facility permits; general. (a) A local government unit:

(1) may require a telecommunications right-of-way user to obtain a permit or permits under this section to place a new wireless support structure or collocate a small wireless facility in a public right-of-way managed by the local government unit;

(2) must not require an applicant for a small wireless facility permit to provide any information that:

(i) has previously been provided to the local government unit by the applicant in an application for a small wireless permit, which specific reference shall be provided to the local government unit by the applicant; and

(ii) is not reasonably necessary to review a permit application for compliance with generally applicable and reasonable health, safety, and welfare regulations, and to demonstrate compliance with applicable Federal

Communications Commission regulations governing radio frequency exposure, or other information required by this section;

(3) must ensure that any application for a small wireless facility permit is processed on a nondiscriminatory basis; and

(4) must specify that the term of a small wireless facility permit is equal to the length of time that the small wireless facility is in use, unless the permit is revoked under this section.

(b) An applicant may file a consolidated permit application to collocate up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all the small wireless facilities in the application:

(1) are located within a two-mile radius;

(2) consist of substantially similar equipment; and

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

In rendering a decision on a consolidated permit application, a local government unit may approve a permit for some small wireless facilities and deny a permit for others, but may not use denial of one or more permits as a basis to deny all the small wireless facilities in the application.

(c) If a local government unit receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the local government unit may extend the 90-day deadline imposed in subdivision 3c by an additional 30 days. If a local government unit elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.

(d) A local government unit is prohibited from requiring a person to pay a small wireless facility permit fee, obtain a small wireless facility permit, or enter into a small wireless facility collocation agreement solely in order to conduct any of the following activities:

(1) routine maintenance of a small wireless facility;

(2) replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or

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

A local government unit may require advance notification of these activities if the work will obstruct a public right-of-way.

(e) Nothing in this subdivision affects the need for an entity seeking to place a small wireless facility on a wireless support structure that is not owned by a local government unit to obtain from the owner of the wireless support structure any necessary authority to place the small wireless facility, nor shall any provision of this chapter be deemed to affect the rates, terms, and conditions for access to or placement of a small wireless facility or a wireless support structure not owned by a local government unit. This subdivision does not affect any existing agreement between a local government unit and an entity concerning the placement of small wireless facilities on local government unit-owned wireless support structures.

(f) No later than six months after May 31, 2017, or three months after receiving a small wireless facility permit application from a wireless service provider, a local government unit that has elected to set forth terms and conditions of collocation in a standard small wireless facility collocation agreement shall develop and make available an agreement that complies with the requirements of this section and section 237.162. A standard small wireless facility collocation agreement shall be substantially complete. Notwithstanding any law to the contrary, the parties to a small wireless facility collocation agreement may incorporate additional terms and conditions mutually agreed upon into a small wireless facility collocation agreement. A small wireless facility collocation agreement between a local government unit and a wireless service provider is considered public data not on individuals and is accessible to the public under section 13.03.

(g) An approval of a small wireless facility permit under this section authorizes the installation, placement, maintenance, or operation of a small wireless facility to provide wireless service and shall not be construed to confer authorization to (1) provide any service other than a wireless service, or (2) install, place, maintain, or operate a wireline backhaul facility in the right-of-way.

(h) The terms and conditions of collocation under this subdivision:

(1) may be set forth in a small wireless facility collocation agreement, if a local government unit elects to utilize such an agreement;

(2) must be nondiscriminatory, competitively neutral, and commercially reasonable; and

(3) must comply with this section and section 237.162.

Subd. 3b. Small wireless facility permits; placement. (a) A local government unit may not require the placement of small wireless facilities on any specific wireless support structure other than the wireless support structure proposed in the permit application.

(b) A local government unit must not limit the placement of small wireless facilities, either by minimum separation distances between small wireless facilities or maximum height limitations, except that each wireless support structure installed in the right-of-way after May 31, 2017, shall not exceed 50 feet above ground level, unless the local government unit agrees to a greater height, subject to local zoning regulations, and may be subject to separation requirements in relation to other wireless support structures.

(c) Notwithstanding paragraph (b), a wireless support structure that replaces an existing wireless support structure that is higher than 50 feet above ground level may be placed at the height of the existing wireless support structure, unless the local government unit agrees to a greater height, subject to local zoning regulations.

(d) Wireless facilities constructed in the right-of-way after May 31, 2017, may not extend more than ten feet above an existing wireless support structure in place as of May 31, 2017.

Subd. 3c. Small wireless facility permits; approval. (a) Except as provided in subdivision 4, a local government unit shall issue a small wireless facility permit to a telecommunications right-of-way user seeking to install a new or replacement wireless support structure for a small wireless facility, or to collocate a small wireless facility on a wireless support structure in a public right-of-way. In processing and approving a small wireless facility permit, a local government unit may condition its approval on compliance with:

(1) generally applicable and reasonable health, safety, and welfare regulations consistent with the local government unit's public right-of-way management;

(2) reasonable accommodations for decorative wireless support structures or signs; and

(3) any reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.

(b) A local government unit has 90 days after the date a small wireless facility permit application is filed to issue or deny the permit, or the permit is automatically issued. To toll the 90-day clock, the local government unit must provide a written notice of incompleteness to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to a local government unit's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon an applicant's submittal of additional documents or information in response to a notice of incompleteness, the local government unit has ten days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify documents or information that were not delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the 90-day clock. Parties can mutually agree in writing to toll the 90-day clock at any time. Section 15.99 does not apply to this paragraph or paragraph (c).

For the purposes of this subdivision, "toll the 90-day clock" means to halt the progression of days that count towards the 90-day deadline.

(c) Except as provided in subdivision 3a, paragraph (c), a small wireless facility permit and any associated encroachment or building permit required by a local government unit, are deemed approved if the local government unit fails to approve or deny the application within 90 days after the permit application has been filed, unless the applicant and the local government unit have mutually agreed in writing to extend the 90-day deadline.

(d) Nothing in this subdivision precludes a local government unit from applying generally applicable and reasonable health, safety, and welfare regulations when evaluating and deciding to approve or deny a small wireless facility permit.

Subd. 4. Permit denial or revocation. (a) A local government unit may deny any application for a right-of-way or small wireless facility permit if the telecommunications right-of-way user does not comply with a provision of this section.

(b) A local government unit may deny an application for a right-of-way permit if the local government unit determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the public right-of-way and its current use.

(c) A local government unit may revoke a right-of-way or small wireless facility permit granted to a telecommunications right-of-way user, with or without fee refund, in the event of a substantial breach of the terms and conditions of statute, ordinance, rule, or regulation or any material condition of the permit. A substantial breach by a permittee includes, but is not limited to, the following:

- (1) a material violation of a provision of the right-of-way or small wireless facility permit;
- (2) an evasion or attempt to evade any material provision of the right-of-way or small wireless facility permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the local government unit or its citizens;
- (3) a material misrepresentation of fact in the right-of-way or small wireless facility permit application;

(4) a failure to complete work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; and

(5) a failure to correct, in a timely manner, work that does not conform to applicable standards, conditions, or codes, upon inspection and notification by the local government unit of the faulty condition.

(d) Subject to this subdivision, a local government unit may not deny an application for a right-of-way or small wireless facility permit for failure to include a project in a plan submitted to the local government unit under subdivision 2, paragraph (b), clause (3), when the telecommunications right-of-way user has used commercially reasonable efforts to anticipate and plan for the project.

(e) In no event may a local government unit unreasonably withhold approval of an application for a right-of-way or small wireless facility permit, or unreasonably revoke a permit.

(f) Any denial or revocation of a right-of-way or small wireless facility permit must be made in writing and must document the basis for the denial. The local government unit must notify the telecommunications right-of-way user in writing within three business days of the decision to deny or revoke a permit. If a permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the local government unit and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The local government unit must approve or deny the revised application within 30 days after the revised application is submitted.

Subd. 5. Appeal. A telecommunications right-of-way user that: (1) has been denied registration; (2) has been denied a right-of-way permit; (3) has had its right-of-way permit revoked; or (4) believes that the fees imposed on the user by the local government unit do not conform to the requirements of subdivision 6, may have the denial, revocation, or fee imposition reviewed, upon written request, by the governing body of the local government unit. The governing body of the local government unit shall act on a timely written request at its next regularly scheduled meeting. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

Subd. 6. Fees. (a) A local government unit may recover its right-of-way management costs by imposing a fee for registration, a fee for each right-of-way or small wireless facility permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way user when that user causes the local government unit to incur costs as a result of actions or inactions of that user. A local government unit may not recover costs from a telecommunications right-of-way user or an owner of a cable communications system awarded a franchise under chapter 238 caused by another entity's activity in the right-of-way.

(b) Fees, or other right-of-way obligations, imposed by a local government unit on telecommunications right-of-way users under this section must be:

(1) based on the actual costs incurred by the local government unit in managing the public right-of-way;

(2) based on an allocation among all users of the public right-of-way, including the local government unit itself, which shall reflect the proportionate costs imposed on the local government unit by each of the various types of uses of the public rights-of-way;

(3) imposed on a competitively neutral basis; and

(4) imposed in a manner so that aboveground uses of public rights-of-way do not bear costs incurred by the local government unit to regulate underground uses of public rights-of-way.

(c) The rights, duties, and obligations regarding the use of the public right-of-way imposed under this section must be applied to all users of the public right-of-way, including the local government unit while recognizing regulation must reflect the distinct engineering, construction, operation, maintenance and public and worker safety requirements, and standards applicable to various users of the public rights-of-way. For users subject to the franchising authority of a local government unit, to the extent those rights, duties, and obligations are addressed in the terms of an applicable franchise agreement, the terms of the franchise shall prevail over any conflicting provision in an ordinance.

(d) A wireless service provider may collocate small wireless facilities on wireless support structures owned or controlled by a local government unit and located within the public roads or rights-of-way without being required to apply for or enter into any individual license, franchise, or other agreement with the local government unit or any other entity, other than a standard small wireless facility collocation agreement under subdivision 3a, paragraph (f), if the local unit of government elects to utilize such an agreement.

(e) Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover the costs associated with a proposed attachment.

(f) Total application fees for a small wireless facility permit must comply with this subdivision with respect to costs related to the permit.

(g) A local government unit may elect to charge each small wireless facility attached to a wireless support structure owned by the local government unit a fee, in addition to other fees or charges allowed under this subdivision, consisting of:

- (1) up to \$150 per year for rent to occupy space on a wireless support structure;
- (2) up to \$25 per year for maintenance associated with the space occupied on a wireless support structure; and
- (3) a monthly fee for electricity used to operate a small wireless facility, if not purchased directly from a utility, at the rate of:
 - (i) \$73 per radio node less than or equal to 100 max watts;
 - (ii) \$182 per radio node over 100 max watts; or
 - (iii) the actual costs of electricity, if the actual costs exceed the amount in item (i) or (ii).

Subd. 7. Additional right-of-way provisions. (a) In managing the public rights-of-way and in imposing fees under this section, no local government unit may:

- (1) unlawfully discriminate among telecommunications right-of-way users;
- (2) grant a preference to any telecommunications right-of-way user;
- (3) create or erect any unreasonable requirement for entry to the public rights-of-way by telecommunications right-of-way users; or
- (4) require a telecommunications right-of-way user to obtain a franchise or pay for the use of the right-of-way.

(b) A telecommunications right-of-way user need not apply for or obtain right-of-way permits for facilities that are located in public rights-of-way on May 10, 1997, for which the user has obtained the

required consent of the local government unit, or that are otherwise lawfully occupying the public right-of-way. However, the telecommunications right-of-way user may be required to register and to obtain a right-of-way permit for an excavation or obstruction of existing facilities within the public right-of-way after May 10, 1997.

(c) Data and documents exchanged between a local government unit and a telecommunications right-of-way user are subject to the terms of chapter 13. A local government unit not complying with this paragraph is subject to the penalties set forth in section 13.08.

(d) A local government unit may not collect a fee imposed under this section through the provision of in-kind services by a telecommunications right-of-way user, nor may a local government unit require the provision of in-kind services as a condition of consent to use the local government unit's public right-of-way or to obtain a small wireless facility permit.

(e) Except as provided in this chapter or required by federal law, a local government unit shall not adopt or enforce any regulation on the placement or operation of communications facilities in the right-of-way where the entity is already authorized to operate in the right-of-way, and shall not regulate or impose or collect fees on communications services except to the extent specifically provided for in the existing authorization, and unless expressly required by state or federal statute.

Subd. 8. Uniform statewide standards. (a) To ensure the safe and convenient use of public rights-of-way in the state, the Public Utilities Commission shall develop and adopt by June 1, 1999, statewide construction standards for the purposes of achieving substantial statewide uniformity in construction standards where appropriate, providing competitive neutrality among telecommunications right-of-way users, and permitting efficient use of technology. The standards shall govern:

(1) the terms and conditions of right-of-way construction, excavation, maintenance, and repair; and

(2) the terms and conditions under which telecommunications facilities and equipment are placed in the public right-of-way.

(b) The Public Utilities Commission is authorized to review, upon complaint by an aggrieved telecommunications right-of-way user, a decision or regulation by a local government unit that is alleged to violate a statewide standard.

(c) A local unit of government may not adopt an ordinance or other regulation that conflicts with a standard adopted by the commission for the purposes described in paragraph (a).

Subd. 9. Authorized contractors. (a) Nothing in this section precludes a telecommunications right-of-way user from authorizing another entity or individual to act on its behalf to install, construct, maintain, or repair a facility or facilities owned or controlled by the telecommunications right-of-way user.

(b) A local government unit is prohibited from imposing fees or requirements on an authorized entity or individual for actions on behalf of a telecommunications right-of-way user that are in addition to or different from the fees and requirements it is authorized to impose on the telecommunications right-of-way user under this section.

Subd. 10. Exemptions. (a) Notwithstanding any other provision in this chapter, this section does not apply to a wireless support structure owned, operated, maintained, or served by a municipal electric utility.

(b) Subdivisions 3a, 3b, 3c, and subdivision 6, paragraphs (d) through (g), and subdivision 7, paragraph (e), do not apply to the collocation or regulation of small wireless facilities issued a permit by a local

government unit before May 31, 2017, under an ordinance enacted before May 18, 2017, that regulates the collocation of small wireless facilities.

History: *1997 c 123 s 4; 1998 c 345 s 4; 2017 c 94 art 9 s 12-20*



September 21, 2017

Saint Paul Planning Commission
25 West Fourth Street, Suite 1400
Saint Paul, MN 55102

Re: Proposed Text Amendments to Zoning Code Chapter 65

Dear Planning Commission Members,

Verizon Wireless ("Verizon") appreciates that the Comprehensive Planning Committee has proposed revisions to Section 65.310 of Article IV of the Saint Paul Zoning Code, regarding cellular telephone antennas, to reflect the recent amendments to Minnesota's Telecommunications Right-of-Way User Law, Minn. Stat. §§ 237.162, 237.163 (the "Law"). As you know, the Law creates a separate, streamlined permitting system for placement of "small wireless facilities" on structures in the public right-of-way. Therefore, to avoid any confusion, we recommend clarifying in Section 65.310 that small wireless facilities are not subject to zoning when they are being placed in the right-of-way. We believe this clarification can be accomplished through the following language (underlining denotes the Comprehensive Planning Committee's proposed text amendment, and red denotes Verizon's recommended revision):

Sec. 65.310. Antenna, cellular telephone.

A device consisting of metal, carbon fiber, or other electromagnetically conductive rods or elements, usually arranged in a circular array on a single supporting pole or other structure, and used for the transmission and reception of radio waves in wireless telephone communications. "Small wireless facilities," as that term is defined in the Minnesota Telecommunications Right-of-Way User Law, placed in the public right-of-way and meeting the requirements of Minnesota Statutes Sections 237.162 and 237.163, are exempt from this definition and the requirements of this Section 65.310.

Standards and Conditions:

- (a) In residential, traditional neighborhood, Ford and business districts, a conditional use permit is required for cellular telephone antennas on a building less than forty-five (45) feet high or on a freestanding pole, except for existing utility poles or replacement utility poles required for structural reasons that match the size and appearance of the existing utility pole it replaces. In residential and traditional neighborhood districts, existing utility poles or replacement utility poles to which cellular telephones antennas are attached shall be at least sixty (60) feet high unless the antennas are located within a canister of a maximum three (3) feet in height and eighteen (18) inches in diameter that is colored to blend in with the pole, in which case the pole shall be at least twenty-five (25) feet high. Conditional use

permit review for such antennas will take into account not only the request made by the application, but also any future eligible facility modifications allowed under 47 CFR § 1.40001, such as antennas of a more obtrusive design or placement than the subject application. A conditional use permit is not required for any eligible facility modification allowed under 47 CFR § 1.40001, nor for any "small wireless facility" placement in the public right-of-way that meets the requirements of Minnesota Statutes 237.162 and 237.163.

This change would clarify that small wireless facilities covered by the Law are not only exempt from the conditional use permit requirement, but also from the design standards and conditions set forth in Section 65.310. Such standards, if any, applicable to small wireless facilities placed in the right-of-way would need to be established through the City's right-of-way ordinance.

In addition to the above revision, Verizon also encourages you to consider a streamlined administrative review process for small wireless facilities placed outside the right-of-way. The conditional use permit review process is disproportionate to the minimal impact of small wireless facilities. As noted in the Comprehensive Planning Committee's comments to the proposed text amendments, a small wireless facility blends more easily into the environment mitigating aesthetic concerns. Often, small wireless facilities are attached to an existing structure, so it is just an extension of an existing use. In addition, the structural and engineering reviews are minimal compared to macro telecommunication sites.

Finally, streamlining the review process for small wireless facilities in the Ford District in particular would enable the District to become a model of connectivity and lay the groundwork for a variety of smart cities solutions. Today, just over half of American households only have a mobile voice connection.¹ For Millennials, the number increase to over two-thirds.² More than 75% of prospective homebuyers are concerned about a strong cellular connection.³ In 2015, the average smartphone in North America consumed 3.7 GB of data per month, and this is expected to increase to 22 GB per month by 2021.⁴ Small wireless facilities serve this increasing demand by enhancing capacity in high traffic areas, dense urban areas, and suburban neighborhoods. Adopting a streamlined permitting process would enable Saint Paul to be at the forefront of small wireless development.

Thank you for considering our revisions. We look forward to working with the City of Saint Paul to deliver the promise of the digital age.

Sincerely,

Courtney Bednarz

Courtney Bednarz

Verizon Network Representative

¹ 2017 CTIA Wireless Snapshot, May 2017 (available at <https://www.ctia.org/docs/default-source/default-document-library/ctia-wireless-snapshot.pdf>); FCC, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Nineteenth Report, DA 16-1061 (Sep. 23, 2016) (available at <https://www.fcc.gov/document/19th-mobile-wireless-competition-report>).

² *Id.*

³ Money, *The Surprising Thing Home Buyers Care About More than Schools*, June 2, 2015 (available at <http://time.com/money/3904761/buy-home-good-cell-mobile-reception/>).

⁴ Ericsson Mobility Report, June 2016 (available at <https://www.ericsson.com/res/docs/2016/ericsson-mobility-report-2016.pdf>).