

AN ORDINANCE EXERCISING CERTAIN LIMITED AUTHORITY RELATING TO THE OPERATION OF VIDEO SERVICES PROVIDERS AND PROVIDING SUPPLEMENTARY REGULATIONS PERTAINING TO THE PLACEMENT OF FACILITIES OF VIDEO SERVICE PROVIDERS AND OTHER UTILITIES MAINTAINING FACILITIES WITHIN THE CITY

Whereas, the 94th General Assembly enacted SB284, codified as Sections 67.2675 through 67.2714 RSMo., inclusive, (“2007 Video Services Providers Act”) establishing a state-wide franchise scheme for cable television and video service providers; and

Whereas, the 2007 Video Services Providers Act authorizes municipalities to continue to regulate use of their rights-of-way, authorizes municipal fees on gross revenues attributable to providers of such services that use the public rights-of-way, and authorizes certain other requirements or obligations that may be imposed by franchise entities (including municipalities) within which such services are provided; and

Whereas, the City was an entity authorized to require franchises and impose franchise fees prior to the enactment of the 2007 Video Services Providers Act and, therefore, has the authority of a “franchise entity” for purposes of the Act; and

Whereas, the City further is authorized to adopt the regulations herein applicable to video service providers and to utilities and other service providers installing facilities in the rights-of-way or on private property within the City pursuant to the City’s reasonable police powers, authority provided by Sections 67.2707 RSMo. and 67.1830 RSMo., et seq., and further by Chapter 89 RSMo., granting zoning authority and authority to regulate the extent and manner of the placement of public utilities and infrastructure, whether publicly or privately owned;

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

SECTION ONE: Chapter 635, Sections 635.020 to 635.440 and Sections 635.610 to 635.660 of the Municipal Code of the City of Wildwood, Missouri (“Code”) are hereby repealed, including all titles and section headings; provided, however, that if any portion of Sections 67.2675 through 67.2714 RSMo., inclusive, are determined to be invalid, this Section One shall be of no force and effect and the repealed Code Sections shall continue in effect until or unless subsequently modified or repealed; and further provided that nothing herein shall be deemed to alter the continuing obligations set forth in Sections 635.070 and 635.080 of this Ordinance.

SECTION TWO: The following provisions relating to video service providers are hereby adopted as ordinance provisions of a general and permanent nature, and if codified, shall be included in the Code with such Code Section numbers and headings as set forth herein unless other numbers and headings are deemed more appropriate by the codifier:

CHAPTER 635 - Video Services Providers

Section 635.020. **Definitions.** The words and phrases used in this Chapter shall have the meanings as set forth in Section 67.2677 RSMo. or, if not defined therein, shall have such meanings as established by the Code, and including the following:

RIGHTS-OF-WAY: The surface and space on, above and below every municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes and facilities thereon including, but not limited to, overhead lighting facilities. This term shall not include any County, State, or Federal rights-of-way except where controlled or maintained by the City or as otherwise provided by applicable laws or pursuant to an agreement between the City and any such person or agency. "Rights-of-way" shall not include public property owned or leased by the City and not intended for right-of-way use including, but not limited to, City Hall property or public works facilities.

ROW ORDINANCE: Chapter 635, Sections 635.170 to 635.320, as well as Chapter 425, "Grading and Excavation" of the City of Wildwood, Missouri Municipal Code and such other ordinances that regulate, without limitation, the excavation, construction and use of the rights-of-way by all persons and such other ordinances and regulations regulating the same.

UTILITY INSTALLATION PERMIT: FOR THE PURPOSES OF THIS CHAPTER, A UTILITY INSTALLATION PERMIT SHALL COMPLY WITH ALL OF THE REQUIREMENTS AND REGULATIONS CONTAINED IN CHAPTER 415.500 CONDITIONAL USE PERMIT PROCEDURE (CUP) OF THE MUNICIPAL CODE OF THE CITY OF WILDWOOD, MISSOURI, EXCEPT AS NOTED HEREIN: ACTIONS RELATING TO THIS TYPE OF PERMIT REQUEST SHALL BE COMPLETED AS PART OF A SINGLE HEARING PROCESS BEFORE THE PLANNING AND ZONING COMMISSION, UNLESS OTHERWISE POSTPONED BY VOTE OF THE PLANNING AND ZONING COMMISSION. THEREAFTER, THE CITY COUNCIL'S TIME ALLOWANCE TO EXERCISE ITS "POWER OF REVIEW" IS HEREBY LIMITED TO A SINGLE MEETING DATE, UNLESS OTHERWISE EXTENDED BY VOTE OF THE CITY COUNCIL. UTILITY INSTALLATION PERMITS MAY BE CONSIDERED SINGULARLY OR IN BULK.

Section 635.030. **Franchise fee.** Pursuant to Section 67.2689 RSMo., and as partial compensation for use of the City's public rights-of-way, each video service provider, or other person providing cable services or video services within the City shall, to the extent permitted by law, pay to the City a fee of five percent (5%) of the gross revenues from such video services provided in the geographic area of the City. Such payment shall be made as required by Section 67.2689 RSMo. The City shall have the right to audit any video service provider as authorized by Section 67.2691 RSMo. Late payments shall accrue interest due to the City compounded monthly at one and one-half percent (1.5%) or such other maximum rate as may be established by law.

Section 635.040. **Customer Service Requirements.** All video service providers providing service within the City shall adopt and comply with the minimum customer service requirements set forth in Section 67.2692 RSMo. Notice or receipt of this Ordinance by the

video service provider shall be deemed notice of the City's having invoking such customer service requirements.

Section 635.050. **Rights-of-Way regulation; indemnification; permits and compliance with other laws.** Video service providers shall comply with the requirements of Sections 67.2707, 67.2709 and all applicable ordinances and regulations consistent with Sections 67.1830 to 67.1846 RSMo. relating to use of the City rights-of-way. Each video service provider shall indemnify and hold harmless the City and its officers, employees and agents from any loss or damage, including, but not limited to attorneys' fees, as provided in such ordinances or regulations, but in no event less than the obligation on video service providers set forth in Section 67.2695 RSMo. The City may require documentation of such indemnification by written agreement or other instrument to the extent permitted by law. In addition, video service providers shall be subject to and comply with such supplementary provisions relating to placement, screening and relocation of facilities as provided in Section 635.110 to 635.150 of this Chapter, and such other applicable laws of the City, except as may be otherwise validly preempted. Notwithstanding any other ordinance to the contrary, no facilities to be used for video services shall be installed without obtaining a permit from the City authorizing the location and plans for such facilities; provided that this provision shall not apply to installation of otherwise lawful and authorized poles or wires.

Section 635.060. **Public, Educational and Governmental Channels.** Each video service provider shall designate a number of channels for public, educational and governmental programming consistent with Section 67.2703 RSMo; provided that any greater number of channels, as may be required in the incumbent cable franchise or franchise ordinance, shall be required pursuant to Section 67.2703.2 RSMo. The City shall bear no cost relating to the transmission, availability or maintenance of such channels unless expressly authorized by the City in writing and approved by the governing body. Incumbent Cable operators and other video service providers shall provide support for such public, educational and governmental channels consistent with Section 67.2703.8 RSMo.

Section 635.070. **Continued Obligations.** The obligations of and regulations governing any cable service provider or video service provider as set forth in any existing cable services or video services franchise agreement, license agreement, rights-of-way use agreement or the Code, shall also continue to apply and be in force to the full extent permitted by applicable law, until expiration as provided therein, or until pre-empted by the issuance of video service authorizations by the Missouri Public Service Commission or otherwise by law, but only to the extent of said preemption, including the imposition of a franchise fee of five percent (5%) imposed on gross revenues of all such providers.

Section 635.080. **Reservation of Rights.** The City retains all rights in Sections 67.2675 through 67.2714 RSMo., inclusive, and may take any and all actions permitted by law to exercise such rights or to enforce such obligations on providers of video service.

Section 635.090. **Notice.** A copy of this Ordinance shall be delivered to each video service provider operating in the City after notice to the City that such provider is authorized to provide service within the City; provided that the provisions of this Ordinance shall, to the extent

permitted by law, not be affected by any claimed or actual failure of a service provider to have received delivery of a copy of this Ordinance.

SECTION THREE: The following supplementary regulations are adopted as part of the general Ordinances of the City; provided that nothing herein shall be deemed to apply in circumstances where such requirements are preempted or would be inconsistent with applicable law:

Section 635.100. **Accessory utility facilities; supplementary regulations.** Every public utility, cable company, video service provider and other users of the City rights-of-way or adjacent easements to provide services shall comply with the supplemental regulations in this Section regarding the placement of accessory utility facilities on public or private property. For purposes of this Section, “accessory utility facilities” shall mean such facilities, including pedestals, boxes, vaults, cabinets, or other ground-mounted or below-ground facilities that directly serve the property or local area in which the facility is placed, are not primarily for transmission or distribution to other locations, do not materially alter the character of the neighborhood or area, and otherwise are customarily found in such areas. Except where limited by other provisions of City Ordinances, accessory utility facilities shall be subject to the following supplementary regulations:

Section 635.110. **Approval; design; location; application.** The design, location, and nature of all accessory utility facilities on private or public property shall require approval of the City, which approval shall be considered in a nondiscriminatory manner, in conformance with this Ordinance, and subject to reasonable permit conditions as may be necessary to meet the requirements of this Ordinance or other City Ordinances. In considering individual or multiple location applications, the City shall review the request to ensure the proposed facilities do not impair public safety, harm property values or significant sight-lines, or degrade the aesthetics of the adjoining properties or neighborhood, and taking into consideration reasonable alternatives. Any material changes or extensions to such facilities or the construction of any additional structures shall be subject to the requirements and approvals as set forth herein. Unless otherwise prohibited, utility facilities subject to this Section may be located in the minimum setback areas provided that all other requirements are met. To the extent permitted by Section 67.2707.3 RSMo., the time, method, manner or location of facilities to be located in the rights-of-way may be established or conditioned by the City to protect the rights-of-way or to ensure public safety.

Section 635.120. **General regulations.** The following general regulations apply to all accessory utility facilities;

a. ***The placement of all such facilities shall be governed by Sections 635.130 and 635.140 herein and, where applicable, any UTILITY INSTALLATION PERMIT conditional-use permit granted pursuant to Sections 635.130 and 635.140, and in accordance with the City's Zoning Ordinance and Subdivision and Development Regulations, UNLESS OTHERWISE NOTED HEREIN.***

b. All such facilities shall be constructed and maintained in such a manner so as not to emit any unnecessary or intrusive noise.

c. All facilities and utility boxes shall be deemed abandoned if (1) declared abandoned by the owner of the facility or utility box; or (2) no longer in active use and the owner fails to respond within forty-five (45) days to a written notice sent by the City requesting confirmation that the facility is no longer in use. All abandoned facilities and utility boxes shall be removed within thirty (30) days of written notice by the City requesting said removal; thereafter, the City may cause the removal at the cost of the utility.

d. Unless otherwise restricted, utility poles for authorized above-ground lines or facilities shall be permitted up to the maximum heights as provided elsewhere in the Code where utilities are not otherwise required to be placed underground; provided that such poles shall be no higher than necessary, maintained so as to avoid leaning from upright position, and without use of guy wires crossing rights-of-way or pedestrian routes, except where approved by the City as necessary due to the lack of feasible alternatives.

e. Utility facilities placed in designated historic areas may be subject to additional requirements regarding the placement and appearance of facilities as may be necessary to reasonably avoid or reduce any negative impact of such placement.

f. Any damage to landscaping or vegetation on private or public property during installation or maintenance of facilities shall be promptly remedied by the facility owner.

g. At least 48 hours prior to any installation, replacement or expansion of any facility located on private property, the facility owner shall provide notice to all property owners within one hundred and eighty-five (185) feet from the site. Notice shall include detailed description of work to be done, the exact location of work and the time and duration when it will be undertaken.

h. No facilities may be located so as to interfere, or be likely to interfere, with any public facilities or use of public property.

i. All utility facilities not authorized by this Section or specifically addressed elsewhere in the Code shall be authorized only as a UTILITY INSTALLATION PERMIT conditional-use permit.

Section 635.130. **Residential districts.** In residential zoning districts, accessory utility facilities less than three and one-half (3.5) feet in height and covering less than eight (8) square feet in area may be installed above-ground in the side and rear yard setback areas, where utility easements exist, with the prior approval of the City. Except as otherwise may be authorized herein, any larger utility facility shall be installed underground or authorized to be installed above-ground only by UTILITY INSTALLATION PERMIT conditional-use permit. All above-ground facilities, where authorized, shall be placed in the rear yard wherever practical. If locating these facilities in the rear yard is not practical, then such facilities may be located in the side yard. Such facilities shall not be located in the front yard or within the public right-of-way, unless otherwise approved by the City upon a determination that all other alternatives are not feasible.

Section 635.140. **Non-residential districts.** In non-residential zoning districts, accessory utility facilities with a height of less than five (5) feet and covering less than sixteen (16) square feet in area may be installed above-ground with the prior approval of the City. Except as otherwise may be authorized herein, any larger utility facility shall be installed underground or authorized to be installed above-ground only by **UTILITY INSTALLATION PERMIT conditional-use-permit.** All above-ground facilities, when authorized, shall be placed in the rear yard wherever practical. If locating these facilities in the rear yard is not practical, then such facilities may be located in the side yard. Such facilities shall not be located in the front yard or within the public right-of-way, unless otherwise approved by the City upon a determination that all other alternatives are not feasible.

Section 635.150. **Landscape screening.** A sight-proof landscape screen shall be provided for all authorized above-ground facilities taller than three (3) feet in height or covering in excess of four (4) square feet in size. Such screen shall be required to sufficiently conceal the facility. A landscape plan, ~~that is prepared by a Registered Landscape Architect~~ identifying the size and species of landscaping materials, shall be submitted by the utility and approved by the City prior to installation of any facility requiring landscape screening, **WHICH SHALL BE REVIEWED, WITH RECOMMENDATION(S) BY THE CITY'S LANDSCAPE ARCHITECT.** The utility shall be responsible for the installation, repair, or replacement of screening materials. Alternative screening or concealment may be approved by the City to the extent it meets or exceeds the purposes of these requirements. Facilities located in rear yards may be exempted from screening where located so as not to be visible from (1) any public property and (2) more than two residential dwelling units.

Section 635.160. **Compliance with other laws.** All accessory utility facilities shall be subject to all other applicable regulations and standards as established as part of the Code, including but not limited to, building codes, zoning requirements and rights-of-way management regulations in addition to the supplementary regulations herein. The provisions of this Section Three shall not apply to any circumstance or entity in which application under such circumstances is preempted or otherwise precluded by superseding law.

SECTION FOUR: Current Sections 635.450 to 635.600 of Chapter 635 are hereby renumbered as Sections 635.170 to 635.320 and the title (Article IV) is also deleted.

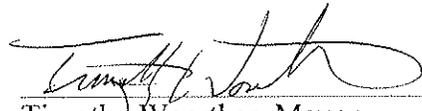
SECTION FIVE: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION SIX: This Ordinance shall take full force and effect from and after the date of its passage by the City Council and approval of the Mayor.

This Bill was passed and approved this 27 day of May, 2008, by the City Council of the City of Wildwood, Missouri, after having been read by title or in full two times prior to passage.



Presiding Officer



Timothy Woerther, Mayor

ATTEST:

ATTEST:



City Clerk



City Clerk

Editor's Note: Original amendments to the proposed bill are indicated by bolded, underlined, and italicized type, with recent deletions shown by a single strike-through line. Current additions are now indicated by text that is capitalized, bolded, and underlined.



WILDWOOD

May 27, 2008

The Honorable City Council
City of Wildwood, Missouri
16962 Manchester Road
Wildwood, Missouri 63040

Re: Amended Bill 1490 Video Service Providers

Council Members:

The Department of Planning and the City Attorney have been working with representatives from AT&T over the past several months regarding the application of a set of proposed regulations relating to use of properties and rights-of-way for utility purposes. The proposed bill under consideration by the City is the result of legislation passed by the State of Missouri in 2007 and focuses on the equipment boxes necessary for this utility to offer a new video service in Wildwood (U-Verse). This set of regulations has been on the City Council agenda for a number of months, while the utility in question could review the regulations and the respective parties could discuss them in more detail. For the most part, those discussions have now concluded and the Department of Planning and the City Attorney are prepared to present the final version of Amended Bill #1490 for City Council action.

The results of these discussions are a limited number of changes to the original regulations, but again are a product of these discussions between the two (2) parties. A summary of the major discussion items and the City's responses are summarized as follows:

Proposed Modification	Section #	Comment
Abandonment of Facilities	635.120 (c) - General Regulations	<p>This particular requirement was revised by the City Attorney, after the initial meeting City staff had with the representative from AT&T, who spoke on this matter at the City Council meeting where the bill was first introduced.</p> <p>The on-going discussion about this revised language relates to concerns on the part of AT&T officials about having equipment installed at a location, but delayed in its use, as part of the overall system. Representatives from AT&T and the City have determined that anticipated use of these facilities would justify not interpreting them as "abandoned," given appropriate notifications and communications are made.</p> <p>No change to current language contained in the amended bill is recommended by the City Attorney and the Department of Planning.</p>

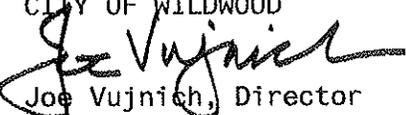
Planning Tomorrow Today

Proposed Modification	Section #	Comment
Undergrounding of the Facilities and related Administrative Processes	Section 635.12 0 (a); Section 635.13 0 ; and Section 635.14 0	<p>The response from AT&T indicates an acceptance of some type of permitting process for these facilities, but expressed concerns about delays and timing, as the system is being constructed. Currently, if the equipment is not undergrounded or located in the rear yard and designed to meet certain specific requirements, a Conditional Use Permit is required. Obtaining a permit of this nature can take up to three (3) to four (4) months. This timeframe creates the problem for the AT&T representative.</p> <p>The Department believes that a permitting process is essential and necessary to address the location of this equipment (and other utility facilities) and its related screening by fencing, plantings, or both. However, it is equally important to note that, if equipment of a certain size threshold is proposed, it can be placed in the side or rear yard areas of private property and not be placed under-ground. Unfortunately, it appears the type of equipment that is planned for this video service exceeds that size threshold in all instances. Therefore, all equipment installations in the City of Wildwood would appear at this stage to require a Conditional Use Permit.</p> <p>Recognizing this situation, the Department is proposing to modify the current process for the purposes of utility locations in the City that reduces the extent of time to review and act upon a request. All other components of this process, in terms of plan submittals, fees, requirements, would remain unchanged, but the hearings would be limited to one (1) meeting at the Planning and Zoning Commission and another for the right of "power of review" by the City Council. This situation would substantially reduce the timeline for review and approval, but still obtain the necessary notification for property owners and information to ensure equipment placement is accomplished in an appropriate and safe manner.</p> <p>Therefore, the Department has prepared revised wording in the proposed amended bill for the City Council's consideration.</p>
Landscape Architect Requirements	Section 635.15 0	The Department had included a requirement that a Landscape Architect prepare all plans for the purposes of these installations. The representative from AT&T stated that, once a design is formalized, the company will utilize it or modify it per the direction of the

Proposed Modification	Section #	Comment
		<p>City. Along with this willingness to allow the City direct input into these design issues, the Department will utilize its own Landscape Architect to assist, thereby negating the need for another such professional by the utility company.</p> <p>Therefore, the Department is recommending the requirement for a Landscape Architect be eliminated from the proposed amended bill.</p>
Application Philosophy	All	<p>The representative from AT&T has indicated concerns about this amended bill, in that it covers all utilities, including video service providers. The City Attorney and the attorneys representing the company have agreed on their differences of opinion about the precedence associated with recent court actions on these matters. Both agreed that such issues may be a discussion for a future time. In any event, the bill specifically does not apply in circumstances that would conflict with applicable State law.</p>

The Department of Planning believes these modifications allow the City to protect its public rights-of-way and private property owners for undue impacts relating to the installation of three (3) large equipment boxes on a site. Additionally, the proposed process allows current boards and commissions to be used in these determinations, while adhering to submittal, review, and appeal requirements contained therein. Retaining current requirements, but shortening the timeline, seems to represent the best interest of all parties.

If any of the City Council members should have questions or comments on the proposed changes to Amended Bill #1490, please feel free to contact the Department of Planning at (636) 458-0440. A presentation on these changes will be provided at tonight's planned Work Session. Thank you for your consideration of this information and participation in its discussion at this meeting.

Respectfully submitted,
 CITY OF WILDWOOD

 Joe Vujnich, Director
 Department of Planning

- Cc: The Honorable Timothy Woerther, Mayor
- Daniel E. Dubruel, City Administrator
- Rob GoIterman, City Attorney
- Joanna Browning, Senior Planner
- Craig Felzien, AT&T Company