



Legislation Text

File #: 21-044-O, **Version:** 1

AN ORDINANCE GRANTING SAC WIRELESS A CONCURRENT USE PERMIT FOR A SMALL CELL WIRELESS FACILITY ON MINNESOTA POWER POLES IN THE PLATTED STREET RIGHT OF WAY NEAR ONE NORTH SIXTH AVENUE WEST.
CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to SAC Wireless and its successor(s) in interests, referred to herein as the "Permittee", to construct and maintain the following:

- (a) One small cell wireless facility on a Minnesota Power pole near One North Sixth Avenue West, as shown in Attachment 1.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the Permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the Permittee has in force a policy of insurance meeting the following requirements:

- (a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and
- (b) Insurance coverage shall include all Permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the Permittee or its agents or representatives; and
- (c) The insurance policy shall be approved by the city attorney; and
- (d) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and
- (e) The city of Duluth shall be named as an additional insured; and
- (f) The insurance certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the Permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the Permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the Permittee shall be sufficient notice of termination.

Upon termination Permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the Permittee agrees to hold to defend,

indemnify, and hold harmless the city of Duluth from all liability or claims of liability for bodily injury or death to persons, or for property damage, in which the claim: A. alleges a negligent or otherwise wrongful act or omission of the Permittee or its employee, agent, or independent contractor in installing, maintaining, or repairing the Permittee's facilities; and alleges that the local government unit is liable, without alleging any independent negligent, or otherwise wrongful, act or omission on the part of the local government unit; or B. is based on the local government unit's negligent or otherwise wrongful act or omission in issuing the permit or in failing to properly or adequately inspect or enforce compliance with a term, condition, or purpose of the permit granted to the Permittee.

Section 5. The Permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, sidewalks, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. The concurrent use permit, and all rights thereunder, may not be sold, assigned, or transferred without the written consent of the city, such consent not to be unreasonably withheld, conditioned or delayed. Upon the sale or transfer of Permittee's interest in the permit granted by this ordinance and written consent, the Permittee shall provide written notice to the planning division within ten days of such transfer. The Permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon Permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, Permittee shall remove the private improvements as provided in Section 3.

Section 8. The Permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the attached exhibits; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement; and

(c) Permittee shall provide notice to work two working days in advance of any work permitted under this permit or any other permits related to such work and shall schedule such work to coordinate with any required inspections.

(d) Permittee shall obtain all other permits as may be required by the city, other governmental agencies and Minnesota Power, including, but not limited to obstruction, excavation, electrical, stormwater, etc; and

(e) Permittee shall not connect any permitted facilities to any power source owned, controlled, or paid for by the city. Permittee shall identify all power sources, and indicate connection and ownership of power source, providing evidence of approval by other entities besides the city when applicable. Indicate location of any new meters as may be required; and

(f) Permittee shall provide a contact name and telephone for our use in case of emergency. The phone number should be available 24 hours per day, 7 days a week.

(g) Permittee will locate any underground items in accordance with Gopher State Once Call rules and the Permittee or subsequent owner of the small wireless facility shall relocate any underground facilities found to be in conflict with existing or future city utility or street projects; and

(h) Permittee must repair or replace at their expense any damage to anything in the right-of-way

caused by the Permittee's permitted installation or operations to the city's reasonable satisfaction; and

(i) Permittee shall require the provider of backhaul facilities serving Permittee's small wireless facility to submit record drawings within 45 days of activation of the small wireless facility installed on each permitted location, showing the actual location of any wiring or conduit runs below grade, including any backhaul facilities serving the small cell site. Record drawings shall be in accordance with the city of Duluth Public Works and Utilities' "Engineering guidelines for Professional Services and Developments"; and

(j) Permittee shall within 90 days after termination remove its equipment, conduits, fixtures and all personal property and restore the all portions of the right of way to its original condition, reasonable wear and tear excepted. City agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of the Permittee shall remain the personal property of the Permittee and the Permittee shall have the right to remove the same at any time during the term of the permit. All underground conduit and pole related fixtures are and shall remain the property of the city; and

(k) Permittee shall implement all measures at the transmission site as required by FCC regulations, including but not limited to posting signs and markings. The city shall cooperate with the Permittee to fulfill its Radio Frequency exposure obligations. City agrees that in the event any future party causes the entire site to exceed FCC Radio Frequency radiation limits, city shall hold such future party liable for all such non-compliance issues caused by their installation. Permittee agrees to install only equipment of the type and operating frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of the city or other users of the structure which existing on the structure prior to the date the permit was issued or to any equipment operated by the city. In the event any of the Permittee's equipment causes such interference, and after the city has notified applicant in writing of such interference, the Permittee will take all steps necessary to eliminate the interference, including but not limited to the Permittee powering down its equipment for intermittent testing; and

(l) The Permittee shall maintain the small wireless facility in a good and safe condition, and in compliance with all applicable fire, health, building or other codes or permits as applicable; and

(m) No open cutting shall be allowed on pavement that has been placed or installed within 15 years; and

(n) City will require a separate permit for backhaul facilities serving the Permittee's small wireless communication facilities. Prior to approval of the permit for any backhaul facilities, the Permittee shall cause said backhaul facilities provider submit to City engineering drawings showing the location of such facilities, signed by a Professional Engineering licensed in the state of Minnesota, and Permittee shall require any provider of backhaul facilities serving Permittee's small wireless facility to file a certificate of insurance approved as to form by the city attorney evidencing that such backhaul provider has in force a policy of insurance meeting the following requirements:

(i) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(ii) Insurance coverage shall include all Permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the Permittee or its agents or representatives; and

(iii) The insurance policy shall be approved by the city attorney; and

(iv) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(v) The city of Duluth shall be named as an additional insured; and

(vi) The certificate shall also reference this ordinance by its ordinance number; and

(o) The City bears no responsibility for accidents or damages to the Permittee's above or below ground facilities, including the electric meter.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the Permittee to file the required insurance certificate as specified in Section 2 60 days after this ordinance takes effect; or

(b) The failure of the Permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This ordinance grants SAC Wireless a concurrent use permit for a small cell wireless facility on an existing distribution pole that is owned and operated by Minnesota Power within the dedicated public right of way. SAC Wireless is acting on behalf of AT&T. This is one of four concurrent use permits submitted by SAC under active zoning review and submitted for city council approval, with two earlier proposals being approved by the city council on September 14, 2021 (10762 and 10763).

The wireless facilities will not be stealthed or camouflaged; the equipment will be visibly attached to the exterior of the pole. The small wireless facility will be installed on a replacement Minnesota Power wooden pole with a carbon steel pole. The street light will be attached to the pole at 30 feet, and the wireless equipment will be placed at 24 to 32 feet. There will be no ground mounted equipment. Included in Attachment 1 is photo simulation of the proposed project.

There is an existing small cell facility near this site, on the other side of 6th Avenue West (near the Radisson Hotel's parking lot, near the alley) operated by Verizon Wireless.

On September 14, 2021, the planning commission held a public hearing on the proposal as shown in Attachment 1, and voted 8 yeas, 0 nays, 0 abstentions, to recommend that the city council approve the request for a concurrent use of streets permit.

Petition initially received: Aug 20, 2021 (Date of Corrected Exhibit)

Applicant: SAC Wireless

PL 21-106