

Introduced By: Alderman Gosh

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF WARSON WOODS TO ENACT OTHER PROVISIONS RELATING TO PREEMPTION BY FEDERAL OR STATE LAW AND TO ENACT NON-PREEMPTED BUILDING CODE REGULATIONS TO ADDRESS RECENT CHANGES IN FEDERAL AND STATE LAWS

WHEREAS, during recent months and years various new state or federal statutes and regulations have been enacted, promulgated, amended, as well as subjected to judicial challenge and invalidation or subject to pending litigation regarding regulation of certain communications providers, services, and operations as they pertain to local Rights-of-way, Zoning Regulations, and other municipal authority; and

WHEREAS, the rapidly changing state of the law has been further made uncertain in that some of these new laws, or invalidated and reenacted or amended laws, are currently being challenged, including in litigation as to Missouri laws seeking to replace Missouri statutes judicially invalidated in 2013;

WHEREAS, despite the uncertainty created by these circumstances, the Board of Aldermen desires to continue to at all times ensure compliance with such changing applicable law, and therefore finds it in the best interest of the public to amend the City's Code pertaining to Communications uses and Zoning Rules and Regulations to be deemed to conform with any changes in state or federal law as that law may be validly enacted and lawfully applicable;

WHEREAS, while existing subsection 415.045(A)(6) already establishes such a "self-preempting" requirement applicable to utility facilities, the Board desires to extend such self-preempting to the entire Municipal Code to ensure that such self-preemption applies to any provisions of the Code that may be affected by the frequently-changing legal requirements imposed on cities; and

WHEREAS, additionally, various building and safety regulations and enforcement provisions are sought to be reenacted or adopted within the City Building codes and/or other Code locations to ensure that such safety provision are not inadvertently preempted as the city continues to have an important public safety role in reviewing applications and seeking to protect the public and others from the numerous documented safety hazards that can arise from communications facilities; *see* Missouri Municipal League Comments to FCC (<http://apps.fcc.gov/ecfs/document/view?id=7521070661>) (document various safety hazards); FCC 13-122 ([https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-153A1.pdf)) (FCC Ruling citing MML at note 507 and 595 in preserving local government health and safety codes and application requirements)

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

SECTION 1. Section 100.080(c) of the Code of the City of Warson Woods is hereby amended to read as follows:

(c) No provision of this Code shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law and furthermore, if any section, subsection, sentence, clause, phrase, or portion of this Code is now or in the future superseded or preempted by state or federal law or found by a court of competent jurisdiction to be unauthorized, such provision shall be automatically interpreted and applied as required by law.

SECTION 2. Chapter 535 of the Code of the City of Warson Woods is hereby amended to enact the following new Section 535.010 as follows:

**Section 535.010 Miscellaneous Building Regulations**

A. *Tower Structures.* Unless otherwise provided by law or variance, the following additional requirements shall apply to the construction, alteration or and maintenance of Towers:

1. For purposes of this Section, the term “Tower” shall mean a permanent structure, having a total height in excess of 50 feet measured from the ground and having one or more legs designed for the support of one or more sign, antenna, light, wind turbine, solar array or other object but excluding buildings serving other purposes and meeting the building requirements for all purposes. A Tower shall not include existing electric utility poles installed by a provider holding a certificate of convenience from the Missouri PSC and installed consistent with industry practice and in conformance with all otherwise applicable federal, state, local requirements.
2. *Safety Fall Zone Required.* All new Towers and extensions or attachments thereto shall be separated by a safety fall zone from any public rights-of-way, sidewalk or street, alley, parking area, playground, or building (except for parking and buildings dedicated solely for access to or maintenance of the Tower), and from any property line, a distance equal to the height of the tower. Towers shall be reasonably designed to reduce the potential damage to persons or property from falling ice or equipment from the Tower or from wind damage or structural failure.
3. In addition to other applicable requirements, the Tower and any appurtenances shall be safely maintained and fenced or otherwise secured to prevent unauthorized access or climbing of the Tower. Barbed, electrified or razor wire is prohibited. Tower legs shall be of monopole design without use of lattice or guy wire support and be engineered and designed with sufficient depth, counter-weight and other mechanisms to address wind-loading and other failure risks under all reasonably anticipated conditions and circumstances.
4. All requirements in section 417.040 shall apply to the construction, modification and maintenance of each Tower and are reincorporated herein as building code requirements to the extent permitted by law.
5. Any Tower not operated for a period of six (6) months or more, shall be deemed abandoned and the Building Commissioner shall send notice of such determination and request for removal within a reasonable time not to exceed ninety (90) days. If a Tower is abandoned, it shall be removed at the owner’s expense. Failure to comply

with this provision shall constitute a public nuisance and building code violation that may be remedied by the City at the Tower or property owner's expense. Any applicant for a new Tower shall place a bond or other security with the City prior to any final approval to ensure abandoned Towers can be removed. The bond or security shall be in the form and amount approved by the Building Commissioner. The amount of the bond shall be determined by the Building Commissioner to satisfy the requirements hereof with regard to the specific Tower to which it would apply based on the estimated total cost of removal of that Tower.

- B. *Appeals.* The procedures of Chapter 155 ("Administrative Procedure For Review of Certain Actions") shall govern appeals by any aggrieved person of a final action of any City Officer, employee, board, commission, or the Board of Aldermen that are claimed by an aggrieved person to be unlawful or an unconstitutional taking of property without compensation.

SECTION 3. Chapter 100 of the Code of the City of Warson Woods is hereby amended to enact the following new Section 100.215 to read as follows:

**Section 100.215 Enforcement; Attorneys' Fees.**

The City shall be entitled to enforce any provision of this Code through all remedies lawfully available, and user of City services, rights-of-way or other property as a condition of such use, and additionally all other persons violating any provision herein, shall, to the full extent permissible by law, pay the City's costs of enforcement, including reasonable attorneys' fees, in the event the person is determined judicially to have violated the terms of this Code or any requirement, provision or agreement enacted or hereunder.

SECTION 4. This ordinance shall take effect and be in full force from and after its passage and approval.

THIS BILL PASSED AFTER HAVING BEEN READ IN FULL TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, MISSOURI THIS 17<sup>th</sup> DAY OF MARCH, 2015.

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Laurance M. Howe, Mayor

ATTEST:

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Kathy Mahany, City Clerk

APPROVED AS TO FORM:

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Paul V. Rost, City Attorney