BILL NO. 5406 ORDINANCE NO. 5261

AN ORDINANCE AMENDING ORDINANCE NO. 4788, THE MUNICIPAL CODE OF THE CITY OF RICHMOND HEIGHTS, MISSOURI, CHAPTER 405; ZONING REGULATIONS; ARTICLE X CONDITIONAL USE PERMITS; SPECIFIC REQUIREMENTS OF INDIVIDUAL USES TELECOMUNICATIONS FACILITIES; TO IMPLEMENT THE UNIFORM WIRELESS COMMUNICATIONS INFRASTRUCTURE AND DEPLOYMENT ACT.

WHEREAS, the Missouri General Assembly enacted HB331 in 2013 and SB650 in 2014 to state the policy of the State of Missouri regarding uniform wireless communications infrastructure deployment; and

WHEREAS, the City of Richmond Heights desires to amend its Municipal Code regarding wireless communications facilities and support structures to be in conformance with the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHMOND HEIGHTS, as follows:

SECTION 1. Sections 405.490 of the Municipal Code dealing with Telecommunications Facilities are hereby deleted and a new Section 405.490 is hereby adopted to read as follows:

Section 405.490: Wireless Communications Facilities and Support Structures

A. *Purposes.* The purposes of this Ordinance are to:

(1) Provide for the appropriate location and deployment of wireless communications infrastructure to better serve the citizens and businesses of the City of Richmond Heights and the metropolitan St. Louis area;

(2) Minimize adverse visual impacts of wireless facilities and support structures through the careful design, siting, landscape screening and innovative camouflaging techniques;

(3) Encourage the use of disguised support structures so as to protect the architectural and scenic quality of the City;

(4) Comply with applicable law including the Federal Telecommunications Act of 1996, 47 USC 332, and the Missouri Uniform Wireless Communications Deployment Act, 67.5090 et seq RSMo.

B. *Definitions.* As used in this section, the following terms shall have the following meanings:

"Accessory equipment", any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

"Antenna", communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Applicant", any person engaged in the business of providing wireless communications services or the wireless communications infrastructure required for wireless communications services who submits an application.

"Application", a request submitted by an applicant to the City to construct a new wireless support structure, for the substantial modification of a wireless support structure, or for collocation of a wireless facility or replacement of a wireless facility on an existing structure.

"Building permit", a permit issued by the City prior to commencement of work on the collocation of wireless facilities on an existing structure, the substantial modification of a wireless support structure, or the commencement of construction of any new wireless support structure, solely to ensure that the work to be performed by the applicant satisfies the applicable building code.

"Collocation", the placement or installation of a new wireless facility on a structure that already has an existing wireless facility, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

"**Collocation Director"**, The Director of Zoning of the City of Richmond Heights, Missouri, or his/her designee.

"Disguised Support Structure", Any freestanding, manmade structure designed for the support of wireless facilities, the presence of which is camouflaged or concealed as an architectural or natural feature. Such structures may include but are not limited to clock towers, campaniles, observation towers, pylon sign structures, water towers, artificial trees, flag poles and light standards.

"Electrical transmission tower", an electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

"Equipment compound", an area surrounding or near a wireless support structure within which are located wireless facilities.

"Existing structure", a structure that exists at the time a request to place wireless facilities on a structure is filed with an authority. The term includes any structure that is capable of supporting the attachment of wireless facilities in compliance with applicable building codes, National

Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering, including, but not limited to, towers, buildings, and water towers. The term shall not include any utility pole.

"FAA", The Federal Aviation Administration.

"FCC", The Federal Communications Commission.

"Height", The vertical distance measured from the base of a structure at ground level to its highest point, including the main structure and all attachments thereto.

"Standard Outdoor Advertising Structures", All signs which advertise products, services or businesses which are not located on the same premises as the sign, including billboards, detached pole signs on separate parcels, wall signs and signs otherwise attached to buildings and/or supported by uprights or braces on the ground.

"Replacement", includes constructing a new wireless support structure of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the preexisting wireless facilities or wireless support structure.

"Substantial modification", the mounting of a proposed wireless facility on a wireless support structure which, as applied to the structure as it was originally constructed.

(a) Increases the existing vertical height of the structure by:

a. More than ten percent; or

b. The height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; or

(b) Involves adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty feet or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);

(c) Involves the installation of more than the standard number of new outdoor equipment cabinets for the technology involved, not to exceed four new equipment cabinets; or

(d) Increases the square footage of the existing equipment compound by more than one thousand two hundred fifty square feet;

"Utility", any person, corporation, county, municipality acting in its capacity as a utility, municipal utility board, or other entity, or department thereof or entity related thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable television, or telecommunications or internet protocol-related services.

"Utility pole", a structure owned or operated by a utility that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting.

"Water tower", a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless communications service", includes the wireless facilities of all services licensed to use radio communications pursuant to Section 301 of the Communications Act of 1934, 47 USC 301.

"Wireless facility", the set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, power supplies, cabling and associated equipment necessary to provide wireless communications services;

"Wireless support structure", a structure, such as a monopole, tower, or building capable of supporting wireless facilities. This definition does not include utility poles.

C. *Accessory Uses:* Satellite earth stations less than 6 feet in diameter and receive only home television antenna.

D. *Permitted Uses:* Wireless facilities and support structures which meet any of the following criteria may be constructed, repaired or modified upon receipt of a building permit issued by the Director of Zoning:

1. Collocation and replacement applications, provided that no permit may be issued for collocation to a certified historic structure as defined in section 253.545 RSMo until at least one public hearing has been held by the Director within 30 days prior to issuance. Such applications are subject to General Condition F.1. of this section, but no other zoning or land use requirements, including design or placement requirements, or public hearing review.

2. The mounting of wireless facilities in or on the roof of any existing building other than a single-family residence, provided that the building was not constructed primarily for the support of antennae and provided that the height of the facilities does not exceed twenty (20) feet from its mounting and that such use is not otherwise prohibited by ordinance

3. Wireless facilities or support structures for the operations of a commercial or public radio or television station licensed by the Federal Communications Commission or a local, state or federal law enforcement or emergency agency may be installed as permitted by law.

4. The installation or mounting of antennae on any electrical transmission towers located in any commercial zoning district of the city.

5. The installation of a disguised support structure and related wireless facilities as part of a building or structure that is otherwise allowed in the district in which located.

6. Wireless facilities or support structures for the operation of a licensed amateur radio facility within the city. The permit application must be accompanied by proof that the applicant or an occupant of the property is a licensed amateur radio operator.

   a. The Director shall issue an amateur radio antenna/ structure permit if it is determined that: (a) any antenna(s) mounted on a roof shall not extend more than sixty-eight (68) feet above grade; (b) any tower-mounted antenna(s) shall not extend more than sixty-two (62) feet above grade when fully extended; and (c) the requirements of this section regarding location, structural components and wiring are complied with. Permits for ground mounted antennas and supports intended exclusively for the support of wire antennas which are so erected as to be readily capable of being relocated from time to time shall describe the area within which such an antenna or support may be positioned.

   b. Any person desiring to install, erect or maintain an amateur radio antenna at any height greater than set forth in the preceding subsection shall file an application therefor with the Board of Adjustment. No fee shall be required for this application. The Board of Adjustment may grant a permit to allow construction to such height as it shall determine if it finds that topographical circumstances or other operational parameters of the antenna(s) and the associated radio equipment so require and that there are adequate provisions to protect adjoining properties.

   c. Wireless facilities or support structures for licensed amateur radio uses that are ground-mounted shall be located in the rear of the lot between the rear line of the principal building on the lot and six (6) feet from the rear lot line. No such antenna, nor any portion of any base or support therefore, may be closer than six (6) feet to any lot line; provided, further, that on corner lots no antenna may be closer to any street than the principal building.

   The placement of dual polar panel antennas on wooden or steel utility poles not to exceed a total height of forty (40) feet including provided that all related equipment is contained within a cabinet which is not placed within the right-of-way of any street or highway.

In the event the Director shall refuse to issue a permit hereunder due to noncompliance with the provisions of this Code, said decision is subject to review by the Planning and Zoning Commission, in accordance with this ordinance and the City Zoning Code.

E. *Conditional Uses:* All wireless facilities and support structures to be installed, built or otherwise modified that are not expressly permitted by subsection D. herein, and not prohibited by subsection F, shall require a conditional use permit issued in accordance with the procedures for conditional use permits in the Municipal Code, as well as a building permit.

F. *Prohibited Uses:* Except as otherwise expressly provided in subsection D:

1. No wireless facilities or support structures shall be permitted in residentially-zoned districts, other than for licensed amateur radio uses.

2. No wireless facilities or support structures shall be permitted to have a total height in excess of one hundred (100) feet.

3. Wireless facilities installed on a building shall not exceed twenty (20) feet from the highest point of the building, other than for licensed amateur radio uses.

4. Unless a disguised support structure is in the form of a standard outdoor advertising structure, the placement of advertising or signs on wireless support structures is prohibited.

G. *General Conditions:* The general criteria and preferences for approving wireless facilities and support structures under this section shall be as follows:

1. *Building Codes and Safety Standards.* All wireless facilities and support structures shall meet or exceed the standards and regulations contained in applicable state and local building codes, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering.

2. *Regulatory Compliance.* All wireless facilities and support structures shall meet or exceed current standards and regulations of the FAA, FCC and any other federal or state agency with the authority to regulate such facilities and support structures. Should such standards or regulations be amended, then the owner shall bring such facilities and support structure into compliance with the revised standards or regulations within six (6) months of the effective date of the revision unless a different date is established by the controlling agency.

3. *Number.* No more than one antenna tower may be erected on any lot in the city; provided, however, that a support used exclusively for the support of a wire antenna for a licensed amateur radio facility and being no wider than six (6)

inches at grade and having a height no greater than fifty (50) feet above grade shall not be considered as an antenna tower for purposes of calculating the permitted number of such towers under this subsection.

4. *Lighting.* Wireless facilities and support structures shall not be illuminated at night unless required by the FAA or other federal or state agencies, in which case, a description of the required lighting scheme will be made a part of the application.

5. *Design:*

   (a) Wireless facilities and support structures should, to the extent reasonably possible, be architecturally and visually compatible with surrounding buildings, structures, vegetation and/or uses already in the area or likely to exist under the regulations of the underlying zoning district.

   (b) Wireless support structures, except disguised support structures, shall maintain a galvanized steel finish or, subject to the requirements of the FAA, FCC or any other applicable federal or state agency, be painted a neutral color consistent with the natural or built environment of the site.

   (c) Wireless facilities other than antennae shall have an exterior finish compatible with the natural or built environment of the site, and shall also comply with such other reasonable design guidelines as may be required by the city.

   (d) Wireless facilities mounted on buildings should be made to appear as unobtrusive as possible by location as far away as feasible from the edge of the building and by making them a color consistent with the natural or building backdrop.

   (e) Wireless facilities shall be screened by appropriate landscaping and/or fencing. Wireless support structures shall be surrounded by a landscape strip of not less than ten (10) feet in width and planted with materials which will provide a visual barrier to a minimum height of six (6) feet. Evergreen trees shall be a minimum of six (6) feet tall and deciduous trees not less than two and one-half (2½) inches in caliper at time of planting.

   Said landscape strip shall be exterior to any security fencing. In lieu of the required landscape strip, a minimum six (6) foot high decorative masonry fence or wall may be approved by the city

upon demonstration by the applicant that an equivalent degree of visual screening is achieved.

(e) All wiring to or from ground mounted antennas or antenna towers located more than five (5) feet from the nearest building wall shall be underground; provided, however, that feed lines to and from antennas for licensed amateur radio facilities which must be open to the air in order to operate as designed (so called "open wire feed lines") need not be enclosed or located underground.

6. *Location and Setback.*

(a) Wireless support structures, except disguised support structures, shall not be located within two hundred (200) feet of any residential structure.

(b) All wireless support structures, except disguised support structures, shall be separated from any residential structure at least a distance equal to the height of the support structure plus ten feet. Support structures on parcels adjacent to residentially-zoned property shall, at a minimum, meet the setbacks of the applicable zoning district as required for the principal structure along the adjoining property lines. No support structure may be placed on residentially-zoned property closer to any residential structures on adjoining properties than the distance from the support structure to the principal structure located on the lot on which the support structure is located.

H. *Miscellaneous:*

(a) For any guyed wireless support structure, ground anchors shall be located on the same parcel as the structure and such anchors shall meet the setbacks required for accessory buildings within the zoning district.

(b) Vehicle or outdoor storage on the site of any wireless facilities or support structure is prohibited.

(c) On-site parking for periodic maintenance and service shall be provided at all locations of wireless facilities and support structures.

(d) Any wireless facility or support structure no longer used for its original communications purpose shall be removed at the owner's expense. The owner and applicable co-users shall provide the city with a copy of any notice to the FCC of intent to cease operations

and shall have ninety (90) days from the date of ceasing operations to remove the facility and/or support structure. In the case of co-use, this provision shall not become effective until all users cease operations. Any wireless support structure not in use for a period of one (1) year shall be deemed a public nuisance and may be removed by the city at the owner's expense. Removal of facilities shall not be a condition of approval of any application.

(f) Prior to the issuance of a building or conditional use permit, other than for a collocation or replacement application, the city may require submittal of easement documents, lease agreements or other documentation of evidence of the right to utilize the property for location of wireless facilities and/or support structures.

H. *Time limits:* All applications regarding wireless facilities and support structures shall be processed in accordance with the time limits established by sections 67.5090 to 67.5103 RSMo.

I. *Fees*: Fees for applications regarding wireless facilities and support structures shall be at the limits established by sections 67.5090 to 67.5103 RSMo.

SECTION 2. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

SECTION 3. This ordinance shall be in full force and effect on the 31st day after its passage as provided by law.

PASSED and SIGNED this 22nd day of September, 2014.

JAMES J. BECK
MAYOR

ATTEST:

PATRICIA S. VILLMER
DEPUTY CITY CLERK

APPROVED AS TO FORM:

KENNETH J. HEINZ
CITY ATTORNEY

First reading: August 18, 2014
Second reading: (held over @ September 2, 2014 meeting)
Vote of Approval: September 22, 2014