



JAMES ISLAND PLANNING COMMISSION
Town Hall
1122 Dills Bluff Road, James Island, SC 29412

MEETING AGENDA
August 12, 2021
6:35 PM

NOTICE OF THIS MEETING WAS POSTED IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT

This meeting will be live streamed on the Town's YouTube channel:
<https://www.youtube.com/channel/UCm9sFR-ivmaAT3wyHdAYZqw/featured>

FACE COVERINGS ARE REQUIRED UNLESS YOU ARE FULLY VACCINATED.

- I. CALL TO ORDER
- II. COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT
- III. INTRODUCTIONS
- IV. APPROVAL OF JUNE 10, 2021 MINUTES
- V. PUBLIC COMMENTS
- VI. STAFF COMMENTS
- VII. DISCUSSION/WORKSHOP ON ZLDR AMENDMENTS TO REGULATE SMALL CELL WIRELESS FACILITIES (*NO VOTES WILL BE TAKEN*)
Planning Commission will continue to discuss potential amendments to the Town of James Island Zoning and Land Development Regulations Ordinance pertaining to regulations and guidelines for placement of small cell wireless facilities.
- VIII. CHAIR'S COMMENTS
- IX. COMMISSIONERS COMMENTS
- X. NEXT MEETING DATE: SEPTEMBER 9, 2021
- XI. ADJOURN

The Planning Commission met in person on Thursday, June 10, 2021 at 6:36 p.m. at the Town of James Island Town Hall, 1122 Dills Bluff Road, James Island, SC. Commissioners present: Deborah Bidwell, Ed Steers, Vice Chair, Zennie Quinn, and Bill Lyon, Chairman, who presided. Absent: Commissioner Mark Maher (gave notice). Also: Kristen Crane, Planning Director, Town Administrator, Ashley Kellahan, Frances Simmons, Town Clerk and Secretary to the Planning Commission, and Town Councilwoman Cynthia Mignano.

Call to Order: Chairman Lyon called the meeting to order at 6:36 p.m. and asked those who wished to stand for the prayer followed by the Pledge of Allegiance. A quorum was present to conduct business.

Compliance with the Freedom of Information Act: Chairman Lyon announced that this meeting was noticed in compliance with the South Carolina Freedom of Information Act.

Introductions: Chairman Lyon introduced the members of the Planning Commission and staff.

Approval of March 11, 2021 Minutes: The minutes of March 11, 2021 were approved upon a motion by Commissioner Quinn, seconded by Commissioner Bidwell and passed unanimously.

Public Comments:

Karen Beard, 537 White Chapel Circle, Myself and my colleagues are representing the James Island members of the Charleston Coalition for Wireless Safety Standards regarding the drafting of a Small Cell Ordinance for James Island.

In your agenda packet, you received the MASC Model Ordinance, and copies of the Charleston, Greenville, Bluffton, and Summerville small cell ordinances. Those ordinances provide no safeguard for residents from the microwave radiation that will be emitted from small cell antennas. In the Charleston ordinance, small cell antennas will be allowed every 300 feet. On James Island, that would be an antenna on almost every utility pole and lamp post in our neighborhoods.

We don't want that, nor do we want it for our children. The 5G technology has not been tested for safety, and we do not want our children to be the long-term test studies.

SO, we're presenting to you tonight a folder containing an alternative small cell ordinance written by the Americans for Responsible Technology organization. They are an organization made up of people like us who are saying, "Wait a minute. Let's apply the Precautionary Principle here, and not rush into something that could be a hazard for our children, and maybe is not even needed."

The benefactor of installing small cell infrastructure is the telecom industry. 5G is not about public safety. It's not about closing the digital divide or addressing broadband inequity issues. 5G is about faster video streaming, self-driving cars, the Internet of Things, and allowing telecom companies to compete with cable companies to generate more and more profits.

We ask you to take a strong stand and write a small cell ordinance protective of James Island residents. **No**, it will not be as easy as using one of the sample ordinances, and **yes**, there may be legal entanglements, but what better use of our attorney's time could there be than searching for and fighting for every possible way to protect James Island residents from technology whose safety has been disputed?

In your folder, you will find all information I sent you via email including a list of reasons small cell applications can be denied, and a list of what other cities are doing. Thank you for your work on this and for taking the time to consider what is best for James Islanders.

Sarah Pursell, 1071 Harborview Rd., I am Sarah Pursell, mother of four who lives in the town of James Island, and a self-educated researcher on the topic of 5G. I'm very concerned about 5G technology. The safety has not been tested for safety in close proximity to the public, and we already know that radiation in any form is hazardous to our health. Some testing has been done on 4G, but a lot of testing has been done on 2G and 3G, (National Toxicology Program, 2019). The National toxicology program concluded there is clear evidence of a convection between non-ionizing radiation and cancer. 4G and 5G are higher frequencies of the same microwave radiation as 2G and 3G, so we can only assume that if 5G is tested, the results will be just as bad, if not worse. We cannot let James Island children be the long-term studies for this new technology.

The wavelength of 5G is different than any other previous radiation we've used, and many experts believe it will be even more damaging to our health, especially in regard to cancer.

Cities all over the country and the world are banning 5G. Why would they do that if it is so safe? Schools are removing wireless technology. Why would they do that if it were safe? The answer is, it's not safe. Especially for our children, with growing, forming bodies and brains. I will not allow my children to play near any cell tower that I am aware of, but unfortunately the awareness and ability to have informed consent is rapidly being removed from me.

I urge you to take a strong stand when writing the Small Cell Ordinance for James Island. Please put measures in place that protect us and allow for choice when it comes to 5G exposure. If I am given informed consent, and choose to expose my family to it, that is one thing. If I don't even know we are being exposed, because the antenna are ubiquitous, that's another thing. Thank you for considering the protective measures that we have given you in our folder tonight.

Alison Van Horn, 860 Stiles Dr. mother of two, suffers from a diagnosis that is aggravated or caused by radio frequency exposure. They have spent a couple of years working on their home to use internet and other technology through hardwired connection vs. Wi-Fi, submitting medical records to the utilities to have smart meters removed and changed to analog from water, gas and electric companies and have spoken with neighbors about any ways they may be willing to assist. If 5G infrastructure is installed in residential areas, they will have an antenna on or very near her property, which is a huge concern and an infringement on her rights as a citizen and property owner. She asked the Planning Commission to look at other options because there are better ways that this can be done.

Brook Lyon, 669 Port Circle: Thanked the Planning Commission for addressing this issue and for looking at other and better options. She also thanked Karen Beard and mentioned that they had worked closely together years ago fighting the cell tower on the soccer field. Mrs. Lyon expressed that she has concerns about 5G; one side says it is ok, and the other says it is harmful. She doesn't think that we know enough about it and believes some are sensitive. She mentioned that Green Bank, a community in West Virginia/Virginia border, where there are no cell phones or Wi-Fi due to a high-tech government telescope, and people move there to get away from radio waves. She asked the Planning Commission to be as restrictive as they could, understanding that their hands are tied on some things.

Staff Comments: None

Discussion on ZLDR Amendments to Regulate Small Cell Wireless Facilities: The Planning Commission discussed potential amendments to the Town's Zoning and Land Development Regulations regarding regulations and guidelines for placement of small cell wireless facilities.

Planning Director, Kristen Crane, gave an overview by Power Point on Small Cell Wireless Facilities and when the Act became effective. She noted in her presentation that even though the new law prevents most local control within ROWs, there are ways to regulate these facilities. She showed examples of various types of cell utility poles and engaged the Planning Commission with in-depth discussion on the ordinances presented to them in their packets. The Ordinances reviewed were MASC Model Ordinance, City of Charleston, City of Greenville, Town of Bluffton, and the Town of Summerville. A copy of the Power Point Presentation is here: <C:\Users\fsimmons\OneDrive - Town of James Island, SC\Documents\Clerk Backup\Planning and Zoning\Presentation on 5G Small Cell Ordinance.pptx>

Mrs. Crane informed the Planning Commission that this process would probably take a couple of months for them to go through options and to be able to answer questions that were not tonight. Some questions brought forth by the Planning Commission were:

Question: Who would approve or disapprove an application?

Answer: Mrs. Crane stated that it would be an administrative process. She said we have not gotten requests for permits yet and denials would be heard by the Board of Zoning Appeals. Mrs. Crane added that she would like to have an ordinance in place prior to receiving any applications.

Question: Is there a reason the utility poles are 15 ft. above the ground?

Answer: Commissioner Bidwell responded to this question.....

Question: Can the Planning Commission use an ordinance from one of the entities that were presented to them and tailor it to the Town?

Answer: Mrs. Crane said MASC's model could be used for that purpose and the Planning Commission could attach a Design Manual to that.

Question: Where is a likely or unlikely location for a pole to be placed?

Answer: No poles can be placed in residential areas. The most likely location would be along Folly Road on an existing utility pole; however, we can provide regulations.

Question: Is Dills Bluff and Camp Roads likely locations for a utility pole?

Answer:

Commissioner Steers commented that the Planning Commission needs to explore an ordinance based upon the comments that were expressed by citizens during public comment.

Question: What members of staff would be involved in the approval process?

Answer: Planning, Public Works and in some instances input from a consulting firm.

Chairman Lyon noted that the Planning Commission needs to develop a strong ordinance. He expressed concern that if too much time is taken before developing an ordinance, a request could go through. We should have an Ordinance before applications or requests are received.

Question: Are there areas that should be exempt?

Answer: School Zones

Commissioner Bidwell talked science and technology. She is happy to help having a background and knowledge in Biology.

Question: Is there specifics for aesthetics _____

Answer:

Question: Has the City of Folly Beach developed an ordinance?

Answer: Mrs. Crane will follow up on this

Question: We should determine the distances of Daycare and Schools in relation to the poles

Answer: Mrs. Crane will reach out to experts to discuss further and talk with the Planning Commission. All agreed that the experts should be non-biased

Question: Determine City of Charleston underground district

Answer: Mrs. Crane will contact the City for information

The Planning Commission thanked Mrs. Crane for the presentation and the work that she did in getting this information to them.

Chairman's Comments: None

Commissioners Comments: None

Next Meeting: The next meeting of the Planning Commission will be held on Thursday, July 8, 2021 at 6:35 p.m.

Adjourn: There being no further business to come before the body, the meeting adjourned at 7:32 p.m.

Respectfully submitted:

Frances Simmons
Town Clerk and Secretary to the Planning Commission

[DRAFTING NOTE: Language in this model ordinance that must be modified for local application is highlighted. Most of these highlighted provisions are self-explanatory. Two provisions require additional explanation.]

First, the Small Wireless Facilities Deployment Act allows special treatment within design districts, historic districts, and underground districts. These three types of districts are referred to together in the model ordinance as “Supplemental Review Districts.” The Municipality should list all Supplemental Review Districts, if any, in Exhibit A. If there are no such districts, the Municipality should delete the highlighted references in the body of the model ordinance.

Second, the Small Wireless Facilities Deployment Act allows the Municipality to adopt a Design Manual that establishes aesthetic, stealth, and concealment requirements applicable to small wireless facilities. The Design Manual may also establish pre-approved designs that do not need separate aesthetic review. The Municipality should include its Design Manual, if any, in Exhibit B. If the Municipality chooses not to adopt a Design Manual, the Municipality should delete the highlighted references in the body of the model ordinance.]

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH THE STANDARDS FOR THE PLACEMENT OF SMALL WIRELESS FACILITIES IN THE [CITY/TOWN] OF [MUNICIPALITY NAME], SOUTH CAROLINA, AND MATTERS RELATED THERETO.

WHEREAS, the [City/Town] of [Municipality Name] (the “Municipality”) encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities (as defined herein) while managing the right of way in a manner that promotes the interests of the public health, safety, and welfare;

WHEREAS, the Municipality recognizes that Small Wireless Facilities, including facilities commonly referred to as small cell and distributed antenna systems, are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to residences, businesses, and schools within the Municipality;

WHEREAS, the Municipality recognizes that Small Wireless Facilities together with high-capacity transport medium such as fiber optic cabling may be effectively deployed in the right of way;

WHEREAS, by Act 179 of 2020, referred to as the South Carolina Small Wireless Facilities Deployment Act and codified as S.C. Code §§ 58-11-800 *et seq.* (the “SWF Act”), the South Carolina General Assembly has established the terms, conditions, procedures, rates, and fees upon which Small Wireless Facilities may be deployed in the right of way;

[**WHEREAS**, the Municipality now desires to enact local terms, conditions, procedures, rates, and fees that are consistent with the SWF Act and that shall apply to the deployment of Small Wireless Facilities in the right of way;]

-or-

[WHEREAS, the Municipality has previously enacted Ordinance No. [Ordinance Number] on [Date] (the “Prior SWF Ordinance”), which established the terms, conditions, procedures, rates, and fees that shall apply to the deployment of Small Wireless Facilities in the right of way;

WHEREAS, in order to ensure that the Municipality is in compliance with the SWF Act, the Municipality hereby repeals the Prior SWF Ordinance and replaces it, in its entirety and effective immediately, with the text set forth below;]

WHEREAS, this Ordinance is intended to grant municipal consent to use of the right of way and establish a standard application process to streamline the issuance of necessary permits in a manner that is not a barrier to competition, and does not unnecessarily delay the implementation and installation of Small Wireless Facilities;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE [CITY/TOWN] OF [MUNICIPALITY NAME], SOUTH CAROLINA, that Title [Code Reference] of the Municipality’s Code of Ordinances is hereby amended to add a new Chapter [Code Reference] entitled “Standards for Placement of Small Wireless Facilities,” to read as follows:

Section 1. Definitions.

“**Antenna**” means (a) communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services; and (b) similar equipment used for the transmission or reception of surface waves.

“**Applicable Codes**” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes that are of general application, address public safety, and are consistent with this Ordinance.

“**Applicant**” means any Person who submits an Application.

“**Application**” means a request submitted by an Applicant for a Permit to (i) Collocate Small Wireless Facilities; or (ii) install, modify, or replace a Pole.

“**Collocate**” means to install, mount, maintain, modify, operate, or replace Small Wireless Facilities on or adjacent to a Pole or Support Structure. “**Collocation**” has a corresponding meaning.

“**Communications Facility**” means the set of equipment and network components, including wires, cables, surface wave couplers, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of “video service” as defined in S.C. Code § 58-12-300(10); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a Wireless Services Provider to provide Communications Services, including cable service, as defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); Wireless Services; surface wave communication; or other one-way or two-way communications service.

“**Communications Network**” means a network used to provide Communications Service.

“Communications Service” means cable service as defined in 47 U.S.C. Section 522(6), information service as defined in 47 U.S.C. Section 153(24), telecommunications service as defined in 47 U.S.C. Section 153(53), or Wireless Services.

“Communications Service Provider” means a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a Wireless Provider.

“Day” means a calendar day unless the last day for the Municipality or an Applicant to take action under this Ordinance ends on a weekend, holiday, or time when all but Municipality emergency services are closed due to weather or some unforeseen situation.

“Decorative Pole” means a Pole, including a Municipality Pole, that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments (other than a Small Wireless Facility, public safety devices, or specially designed informational or directional signage or temporary holiday or special event attachments) have been placed or are permitted to be placed according to nondiscriminatory rules or codes.

“Design District” means a discrete area within the jurisdiction of the Municipality for which the Municipality maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis among all occupants of the ROW, on the grounds that the characteristics of the discrete area warrant design and aesthetic standards that differ from those that apply to the majority of the areas within the jurisdiction of the Municipality. [The Design Districts in existence or otherwise established as of the date hereof are set forth in **Exhibit A** hereto.]

“Design Manual” means a manual or guidebook that sets forth additional aesthetic, design, concealment, and stealth requirements applicable to Small Wireless Facilities. The Design Manual may also, but need not, set forth examples of Small Wireless Facility deployments that the Municipality deems to comply with this Ordinance. [The initial form of the Design Manual is attached hereto as **Exhibit B**.]

“Eligible Facilities Request” means a request for modification of an existing tower or base station (as those terms are defined in 45 CFR §1.6100(b)) that does not involve a substantial change in the physical dimensions of such tower or base station and that involves Collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.

“Fee” means a one-time, non-recurring charge.

“Historic District” means a group of buildings, properties, or sites that is either:

- (a) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or
- (b) a registered historic district pursuant to State law at the time the Application is submitted; or

(c) an “overlay zone,” as defined in and limited by the South Carolina Comprehensive Planning Act, (1) that has been established by the Municipality at least sixty days prior to the relevant Application; (2) for which the special public interest to be protected is the preservation and protection of historic and architecturally valuable districts and neighborhoods or archaeologically significant resources according to uniform design standards; and (3) for which the Municipality maintains and enforces objective standards that are published in advance and applied on a uniform and nondiscriminatory basis.

[The Historic Districts in existence or otherwise established as of the date hereof are set forth in **Exhibit A** hereto.]

“Micro Wireless Facility” means a Small Wireless Facility that (a) is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height; and (b) for which no exterior antenna is longer than eleven inches.

“Municipality Pole” means a Pole owned, managed, or operated by or on behalf of the Municipality; provided, however, that such term shall not include any Pole, Support Structure, electric transmission structure, or equipment of any type that is part of a municipally owned or municipally controlled electric plant or system for furnishing of electricity to the public for compensation. The term Municipality Pole shall include, without limitation, Poles that the Municipality leases, rents, licenses, or otherwise compensates the owner thereof for the provision of street lighting.

“Permit” means a written authorization, in electronic or hard copy format, required to be issued by the Municipality to initiate, continue, or complete the Collocation of a Small Wireless Facility or the installation, modification, or replacement of a Pole upon which a Small Wireless Facility is to be Collocated.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Municipality.

“Pole” means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within the ROW including, but not limited to, a replacement Pole and a Municipality Pole. A Pole shall not include a support structure or electric transmission structure.

“Rate” means a recurring charge.

“Right of Way” or “ROW” means the area through, upon, over, or under a road, highway, street, sidewalk, alley, or similar property provided; however, that such term shall apply only to property or any interest therein that is under the ownership or control of the Municipality and shall not include property or any interest therein acquired for or devoted to a federal interstate highway. For purposes of this definition, the Municipality shall be deemed to have “control” of property and interests thereon owned by the State and/or the South Carolina Department of Transportation to the extent that such property and interests are within the territorial jurisdiction of the Municipality.

“Small Wireless Facility” means radio transceivers; surface wave couplers; Antennas; coaxial or fiber optic cable located on a Pole or Support Structure, immediately adjacent to a Pole or Support Structure, or directly associated with equipment located on a Pole or Support Structure and within a one hundred-foot radius of the Pole or Support Structure; regular and backup power supplies and rectifiers; and associated

ancillary equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a Communications Network and that meets both of the following qualifications:

(a) each Wireless Provider's Antenna could fit within an enclosure of no more than six cubic feet in volume; and

(b) all other wireless equipment associated with the Small Wireless Facility, whether ground- or pole-mounted, is cumulatively no more than twenty-eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters, concealment elements, network interface devices, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

The term "Small Wireless Facility" does not include: the Pole, Support Structure, or improvements on, under, or within which the equipment is located or Collocated or to which the equipment is attached; Wireline Backhaul Facilities; or coaxial or fiber optic cable that is between Small Wireless Facilities, Poles, or Support Structures or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. For purposes of this definition, in order to be considered directly associated with equipment located on a Pole or Support Structure, coaxial or fiber optic cable must not extend more than one hundred feet in radial circumference from the base of the Pole or Support Structure to which the Antenna is attached. No portion of a Small Wireless Facility may be used as a Wireline Backhaul Facility.

"State" means the State of South Carolina.

"Supplemental Review Districts" means Design Districts, Historic Districts, and Underground Districts.

"Support Structure" means a building, billboard, or any other structure in the ROW to which a Small Wireless Facility is or may be attached. A "Support Structure" shall not include an electric transmission structure or pole.

"Technically Feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a Small Wireless Facility or its design, concealment measures, or site location can be implemented without a material reduction in the functionality of the Small Wireless Facility.

"Underground District" means a group of buildings, properties, or sites in which the Municipality, at least sixty days prior to the relevant Application, has required all communications and electric lines in the specified geographic area to be placed underground, and for which the Municipality maintains and enforces objective standards that are published in advance and applied on a uniform and nondiscriminatory basis. [The Underground Districts in existence or otherwise established as of the date hereof are set forth in **Exhibit A** hereto.]

"Wireless Infrastructure Provider" means any Person, including a Person authorized to provide telecommunications service in the State, acting to build or install wireless communication transmission equipment, Small Wireless Facilities, or Support Structures, but that is not a Wireless Services Provider.

"Wireless Provider" means a Wireless Infrastructure Provider or a Wireless Services Provider.

“Wireless Services” means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

“Wireless Services Provider” means a Person who provides Wireless Services.

“Wireline Backhaul Facility” means an above-ground or underground wireline facility used to transport communications between a small wireless facility network interface device and a network or another small wireless network interface device.

Section 2. Purpose and Scope; General Provisions.

(a) **Purpose.** The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in ROWs within the jurisdiction of the Municipality.

(b) **Scope and Intent.** It is the intent of this Ordinance to establish uniform standards applicable to the application for and deployment of Small Wireless Facilities in a manner that serves the interests of the Municipality, its citizens, and the general public by advancing the following purposes:

(1) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places;

(2) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(3) Prevention of interference with other facilities and operations of facilities lawfully located in the ROWs or public property;

(4) Preservation of the character of neighborhoods where facilities are installed;

(5) Preservation of the character of and applicable land use requirements within Design Districts, Historic Districts, and Underground Districts; and

(6) Facilitation of the rapid deployment of Small Wireless Facilities to provide the citizens with the benefits of advanced Wireless Services.

(c) **Applicable only to Small Wireless Facilities.** Nothing in this Ordinance limits the Municipality’s powers with respect to wireless facilities that are not Small Wireless Facilities in the ROW, or Poles that are used for purposes other than installation of Small Wireless Facilities in the ROW.

(d) **Right to Prevent Interference.** The Municipality retains the right to require that all Small Wireless Facilities shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire, and emergency services) equipment.

(e) **Imminent Risk to Public Safety.** If the Municipality determines that a Wireless Provider’s activity in the ROW pursuant to this Ordinance creates an imminent risk to public safety, the Municipality may provide written notice to the Wireless Provider and demand that the Wireless Provider address such risk. If the Wireless Provider fails to reasonably address the risk within twenty-four hours of the written notice, the Municipality may take or cause to be taken action to reasonably address such risk and charge the Wireless Provider the reasonable documented cost of such actions.

Section 3. Permitted Use; Application Process and Fees.

(a) **Permitted Use and Consent.** A Wireless Provider shall have the right, as a permitted use subject to review and conditions as set forth herein, to Collocate Small Wireless Facilities and install, maintain, modify, operate, and replace Poles in the ROW. These structures and facilities must be installed and maintained so as not to create a safety hazard; obstruct or hinder the usual travel in or the public's safe use of the ROW; or obstruct the legal use of the ROW by utilities. In accordance with Article VIII, Section 15 of the State Constitution and related municipal code and ordinance provisions, the Municipality consents to the use of the ROW by Permit holders acting in compliance with this Ordinance.

(b) **Permit Required.**

(1) No Person shall Collocate a Small Wireless Facility or install a new, modified, or replacement Pole or Support Structure associated with a Small Wireless Facility without first filing a Small Wireless Facility Application and obtaining a Permit as set forth herein. The Municipality may require an Applicant to obtain additional permits for such activity, provided that such additional permits are of general applicability and do not apply exclusively to Small Wireless Facilities. An Applicant shall not be required to obtain or pay any fees for a building permit, as the Permit issued pursuant to this Ordinance serves as a building permit for the applicable Poles and Small Wireless Facilities. Any applications for any such additional permits, once submitted, must be acted upon within the same number of days as an Application for a Permit under this Ordinance. The Municipality shall publish and keep current a list of each additional permit that is required for the Collocation of a Small Wireless Facility or the installation of a new, modified, or replacement Pole. Any failure to comply with this subsection by a Wireless Provider shall allow the Municipality, in its sole discretion, to restore the ROW to its condition prior to the unpermitted Collocation or installation and to charge the responsible Wireless Provider its reasonable, documented cost of restoration, plus a penalty not to exceed one thousand dollars (\$1,000). The Municipality may suspend the ability of the Wireless Provider to receive any new Permits from the Municipality until the Wireless Provider has paid the amount assessed for such restoration costs; provided, however, that the Municipality shall not suspend such ability of any Applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits.

(2) For deployments in ROWs under the ownership or control of the South Carolina Department of Transportation ("SCDOT"), a Wireless Provider may, in lieu of filing a formal Application hereunder, request that the Municipality evidence its approval of the proposed deployment by consenting in writing to the Wireless Provider's application for a SCDOT encroachment permit. If the Municipality consents in writing to the issuance of an SCDOT encroachment permit, it shall concurrently therewith issue a Permit consistent with such consent. In all cases, the Municipality's consent may be conditioned on compliance with the Municipality's lawful and applicable design, aesthetic, stealth, and concealment standards, and subject to the foregoing, the Municipality will not unreasonably withhold or delay its written consent. Notwithstanding the foregoing, the Wireless Provider shall retain the right to file a formal Application for a Permit hereunder, in which case the terms, conditions, and requirements of this Ordinance shall apply in full to such Application.

(c) **Permit Applications.** All Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the Municipality. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as

“proprietary” or “confidential” by clearly marking each page of such materials accordingly, and the Municipality shall endeavor to protect materials so designated from public disclosure to the fullest extent permitted by State law.

(d) **Application Requirements.** The Application shall be made by the Applicant, or its duly authorized representative as noted in a notarized statement from the Applicant, and shall contain the following:

(1) the Applicant’s name, address, telephone number, and email address, including emergency contact information for the Applicant;

(2) the names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;

(3) a general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;

(4) detailed construction drawings regarding the proposed use of the ROW;

(5) to the extent the proposed facility involves Collocation on a Pole, Decorative Pole, or Support Structure, a structural report performed by a duly licensed engineer in South Carolina evidencing that the Pole, Decorative Pole, or Support Structure will structurally support the Collocation, or that the Pole, Decorative Pole, or Support Structure may and will be modified to meet structural requirements, in accordance with Applicable Codes;

(6) for any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;

(7) information indicating the approximate horizontal and vertical locations, relative to the boundaries of the ROW, of the Small Wireless Facility for which the Application is being submitted;

(8) if the Application is for the installation of a new Pole or replacement of a Decorative Pole, a certification that the Wireless Provider has determined after diligent investigation that it cannot meet the service objectives of the Application by Collocating on an existing Pole or Support Structure on which:

(A) the Wireless Provider has the right to Collocate subject to reasonable terms and conditions; and

(B) such Collocation would be Technically Feasible and would not impose significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and shall provide a written summary of the basis for such determination;

(9) if the Small Wireless Facility will be Collocated on a Pole or Support Structure owned by a third party, other than a Municipality Pole, a certification that the Wireless Provider has permission from the owner to Collocate on the Pole or Support Structure;

(10) an affirmation that the Applicant is, on the same date, submitting applications for the permits identified in the list the Municipality maintains pursuant to Section 3(b) of this Ordinance;

(11) any additional information reasonably necessary to demonstrate compliance with the criteria set forth in Section 4(f) of this Ordinance; and

(12) for any Applicant that is not a Wireless Services Provider, an attestation that a Wireless Services Provider has requested in writing that the Applicant Collocate the Small Wireless Facilities or install, modify, or replace the Pole at the requested location.

(e) ***Routine Maintenance and Replacement.*** An Application shall not be required for: (1) routine maintenance; (2) the replacement of Small Wireless Facilities with Small Wireless Facilities that are substantially similar or the same size or smaller; or (3) the installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are suspended on cables that are suspended between Poles or Support Structures in compliance with Applicable Codes by a Wireless Provider that is authorized to occupy the ROW and that is remitting a consent, franchise, or administrative fee pursuant to S.C. Code Ann. § 58-9-2230. Notwithstanding the foregoing, the Municipality may require that prior to performing any activity described above, an Applicant must apply for and receive a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for such activity. Such a permit must be issued to the Applicant on a nondiscriminatory basis upon terms and conditions that are consistent with Applicable Codes and that apply to the activities of any other Person in the ROW that require excavation or the closing of sidewalks or vehicular lanes.

(f) ***Information Updates.*** Any amendment to information contained in an Application shall be submitted in writing to the Municipality within ten (10) business days after the change necessitating the amendment.

(g) ***Consolidated Application.*** An Applicant seeking to Collocate Small Wireless Facilities may submit a single consolidated Application, provided that such a consolidated Application shall be for a geographic area no more than two miles in diameter and for no more than thirty Small Wireless Facilities. In such case, the Applicant may receive a single Permit for the Collocation of multiple Small Wireless Facilities. The denial of one or more Small Wireless Facilities in a consolidated Application must not delay processing of any other Small Wireless Facilities in the same consolidated Application. Solely for purposes of calculating the number of Small Wireless Facilities in a consolidated Application, a Small Wireless Facility includes any Pole on which such Small Wireless Facility will be Collocated.

(h) ***Application Fees.*** The Municipality hereby determines that the following Fees for Applications are reasonable and nondiscriminatory and do not recover more than the Municipality's direct costs for processing an Application. For each Application, the Municipality hereby imposes Fees as follows:

(1) for Applications to Collocate Small Wireless Facilities on existing Poles or Support Structures, one hundred dollars (\$100) each for the first five Small Wireless Facilities in the same Application and fifty dollars (\$50) for each additional Small Wireless Facility in the same Application;

(2) for Applications to Collocate Small Wireless Facilities on new Poles, one thousand dollars (\$1,000) for each Pole, which Fee covers both the installation of the new Pole and the Collocation on the new Pole of associated Small Wireless Facilities; and

(3) for Applications to Collocate Small Wireless Facilities on modified or replacement Poles, two hundred fifty dollars (\$250) for each Pole, which Fee covers both the modification or replacement of the Pole and the Collocation on the Pole of associated Small Wireless Facilities.

The Application Fee shall apply to a Wireless Provider regardless of whether the Wireless Provider is subject to a business license tax that is or may be imposed upon it pursuant to S.C. Code Section 58-9-2220 or a franchise, consent, or administrative fee that is or may be imposed upon it pursuant to S.C. Code Section 58-9-2230. The Application Fee shall apply to a Communications Service Provider regardless of whether the Communications Service Provider is subject to a franchise fee that is or may be imposed upon it pursuant to S.C. Code Section 58-12-330.

(i) **Consultant Fees.** To the extent that the Municipality engages one or more consultants to assist in review of Applications, the Municipality shall impose a Fee for such Applications to the extent permitted by, and calculated in accordance with, S.C. Code Section 58-11-850(D)(4).

Section 4. Action on Permit Application.

(a) ***Notice of Incompleteness.*** Within ten days of receiving an Application, the Municipality must determine and notify the Applicant in writing whether the Application is complete. If an Application is incomplete, the Municipality shall specifically identify the missing information in writing. The processing deadline set forth in Section 4(b) below is tolled from the time the Municipality sends the notice of incompleteness to the time the Applicant provides the missing information. The processing deadline also may be tolled by agreement of the Applicant and the Municipality, confirmed in writing.

(b) ***Time Requirements for Review of Applications.*** An Application must be processed on a nondiscriminatory basis. The following shall apply to all Applications except those for Eligible Facilities Requests, which are addressed below in Section 4(c). The Municipality shall make its final decision to approve or deny the Application within sixty (60) days of receipt of a complete Application for Collocation of Small Wireless Facilities and within ninety (90) days of receipt of a complete Application for the installation, modification, or replacement of a Pole and the Collocation of associated Small Wireless Facilities on the installed, modified, or replaced Pole. If the Municipality fails to act on an Application within the applicable time period, the Applicant may provide the Municipality written notice that the time period for acting has lapsed. The Municipality shall then have twenty (20) days after receipt of such notice to render its written decision. The Application shall be deemed to have been approved by passage of time and operation of law if the Municipality does not render its written decision within the noticed twenty (20) days. If applicable federal or State law establishes a shorter period or different requirements for action, the Municipality shall comply with such applicable law, but the remedy for non-compliance shall be limited to the remedy established by that applicable law.

(c) ***Eligible Facilities Requests.*** If the Application is an Eligible Facilities Request, the Municipality shall approve the Application within 60 days of receipt of the Application, subject to tolling after notification of an incomplete application until the date when the Applicant submits all the documents and information identified in the notice of incompleteness. Any approval shall be operative, and any Permit issued pursuant to this subsection shall remain in effect, only for so long as federal law

(47 U.S.C. § 1455) and implementing Federal Communications Commission regulations (47 C.F.R. §1.40001) provide for special approval of an Eligible Facilities Request. In approving an Eligible Facilities Request hereunder, the Municipality intends only to comply with the requirements of federal law and not to grant any property rights, interests, or consents except as compelled by federal law.

(d) **Notice in Writing Required.** The Municipality shall notify the Applicant in writing of its final decision. If the Application is denied, the Municipality shall specify the basis for a denial, including citations to federal, State, or local code provisions and/or statutes on which the denial was based.

(e) **Right to Cure.** The Applicant may cure the deficiencies identified by the Municipality and resubmit the Application within thirty (30) days of the denial without paying an additional Application Fee. The Municipality shall approve or deny the revised Application within thirty (30) days of resubmission and limit its review to the deficiencies cited in the denial. If the Municipality fails to act on a revised Application within this thirty-day period, the Applicant may provide the Municipality written notice that the time period for acting has lapsed, and the Municipality shall then have five (5) days after receipt of such notice to render its written decision approving or denying the revised Application. The revised Application shall be deemed to have been approved by passage of time and operation of law if the Municipality does not render its written decision within the noticed five (5) days.

(f) **Permissible Bases for Denial.** The Municipality may deny an Applicant's proposed Collocation of a Small Wireless Facility or a proposed installation, modification, or replacement of a Pole, Decorative Pole, or Support Structure only if the proposed Collocation, installation, modification, or replacement:

- (1) interferes with the safe operation of traffic control or public safety equipment;
- (2) interferes with sight lines or clear zones for transportation or pedestrians;
- (3) interferes with compliance with the Americans with Disabilities Act or similar federal or State standards regarding pedestrian access or movement;
- (4) requests that ground-mounted Small Wireless Facility equipment be located more than seven and one-half feet in radial circumference from the base of the Pole, Decorative Pole, or Support Structure to which the Antenna is to be attached, provided that the Municipality shall not deny the Application if a greater distance from the base of the Pole, Decorative Pole, or Support Structure is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;
- (5) fails to comply with the height limitations permitted by this Ordinance or (if applicable) in the Design Manual, or with reasonable and nondiscriminatory horizontal spacing requirements of general application adopted by an enactment that concern the location of ground-mounted equipment and new Poles;
- (6) designates the location of a new Pole, Decorative Pole, or Support Structure for the purpose of Collocating a Small Wireless Facility within seven feet in any direction of an electrical conductor, unless the Wireless Provider obtains the written consent of the power supplier that owns or manages the electrical conductor;
- (7) fails to comply with Applicable Codes;

(8) fails to comply with the requirements applicable to the aesthetic, stealth, and concealment requirements contained in this Ordinance, with the requirements applicable to Supplemental Review Districts, or (if applicable) with the Design Manual;

(9) fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements; or

(10) fails to comply with laws of general applicability that address the occupancy or management of the ROW and that are not otherwise inconsistent with this article.

(g) **Requirement to Replace or Upgrade.** The Municipality may not require a Wireless Provider to replace or upgrade an existing Pole except for reasons of structural necessity, compliance with Applicable Codes, or compliance with this Ordinance (including, if applicable, the Design Manual). A Wireless Provider may, with the permission of the Pole owner, replace or modify existing Poles, but any such replacement or modification must be consistent with the design aesthetics of the Poles being modified or replaced.

(h) **Compensation.** Subject to the limitations set forth herein, every Permit shall include as a condition the Applicant's agreement to pay such lawful franchise fees, business license taxes, administrative fees, and consent fees as are permitted under applicable South Carolina and federal law. The Applicant shall also pay all applicable *ad valorem* taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the Municipality.

Section 5. Requirements for Small Wireless Facilities; New, Modified, or Replacement Poles; Decorative Poles.

(a) **Administrative Review.** The Municipality shall perform an administrative review of Applications including the location or installation of new, modified, or replacement Poles and/or Support Structures and the Collocation of Small Wireless Facilities and equipment on Poles or Support Structures. Review factors, in addition to location, shall include the size, shape, color, texture, and materials of the structures and attachments.

(1) The Municipality may require that a proposed Small Wireless Facility or new, modified, or replacement Pole be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) than existing facilities, structures, equipment, and Poles located within five hundred (500) linear feet on the same ROW as the subject Small Wireless Facility, Pole, or Support Structure.

(2) Where Small Wireless Facilities are determined to be appropriate, the use of reasonable stealth and concealment treatments, low-profile equipment and control boxes, and screening may be required to avoid significant negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the Municipality upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or concealment treatments or imposes an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.

(3) Supplemental Review Districts identified in Section 5(c) [and listed in Exhibit A] may be subject to a higher level of review.

(4) The Municipality may maintain a Design Manual which sets forth additional aesthetic, design, concealment, and stealth requirements applicable to Small Wireless Facilities. The Design Manual may also, but need not, set forth examples of Small Wireless Facility deployments that the Municipality deems to comply with this Ordinance and provide a means for pre-approval of designs that are suitable for a particular location, even if not strictly compliant with the design, placement, and aesthetic requirements of this Ordinance provided the design otherwise serves the goals of this Ordinance. **[If the Municipality initially adopts a Design Manual: The initial form of the Design Manual is attached hereto as Exhibit B. The Design Manual may be amended from time to time by way of a duly enacted resolution.]**

(b) **Maximum Size of Permitted Use.**

(1) New Small Wireless Facilities (including any related Antenna) in the ROW may not extend more than ten feet above an existing Pole in place as of the effective date of this Ordinance, or for Small Wireless Facilities (including any related Antenna) on a new Pole, above the height permitted for a new Pole pursuant to this section.

(2) Each new, modified, or replacement Pole installed in the ROW may not exceed the greater of ten feet in height above the tallest existing Pole in place as of the effective date of this Ordinance located within five hundred feet of the new, modified, or replacement Pole in the same ROW, or fifty feet above ground level, except in Design Districts and Historic Districts where the height limit is forty feet above ground level.

(3) For Applications to place Poles in residential zoning districts to deploy Small Wireless Facilities, the Municipality may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the Application, and the Wireless Provider shall use the Municipality's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(4) Collocation is not allowed on a Decorative Pole less than twenty feet in height.

(5) New Poles are not permitted in a corridor where there are existing Poles that can be used, modified, or replaced to allow the proposed Collocation, unless the Applicant can demonstrate that (A) it is not Technically Feasible to use, modify, or replace such existing Poles; or (B) such use, modification, or replacement would impose significant additional costs on the Wireless Provider, as certified by the Wireless Provider in good faith and based on the assessment of an engineer licensed in South Carolina along with a written summary of the basis for the certification; or (C) a new Pole may be placed in a manner that will cause no more interference with the ROW and will have no more of an impact on the overall appearance of the corridor and on adjoining properties than would the use, modification, or replacement of an existing Pole.

(c) **Supplemental Review Districts.** Collocated Small Wireless Facilities and new, modified, or replacement Poles or Support Structures located in Supplemental Review Districts shall be subject to the compliant provisions (as defined in the SWF Act) pertaining to design and aesthetic standards in the ordinance establishing the Supplemental Review District(s) in addition to the requirements of this Ordinance. In addition, the following rules shall apply within the Supplemental Review Districts.

(1) ***Underground Districts.*** A Wireless Provider shall comply with reasonable and nondiscriminatory requirements that prohibit the installation of Poles in the ROW in an Underground District where: (A) no less than sixty days prior to the submission of the Application, the Municipality has required all such lines to be placed underground; (B) Poles the Municipality allows to remain are made available to Wireless Providers for the Collocation of Small Wireless Facilities and may be replaced by a Wireless Provider to accommodate the Collocation of Small Wireless Facilities in compliance with this Ordinance; and (C) a Wireless Provider is allowed to install a new Pole when it is not able to provide Wireless Services by Collocating on a remaining Pole or Support Structure. Nothing in this section shall prohibit the use or replacement of existing Poles or Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to appropriate design and concealment measures and a finding that such use or replacement does not increase the height of the Pole or Support Structure by more than three feet.

For any such Application to install a new Pole in an Underground District, the Municipality may propose an alternate location in the ROW within one hundred fifty (150) feet of the location set forth in the Application. The Wireless Provider shall use the Municipality's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination. For Small Wireless Facilities installed before the Municipality establishes an Underground District, the Municipality shall either permit Wireless Providers to maintain the Small Wireless Facilities in place or permit the Wireless Provider to replace the associated Pole within fifty (50) feet of the prior location. In the latter case, the Wireless Provider shall allow other Communications Service Providers with attachments on the existing Pole to place those attachments on the replacement Pole under the same or reasonably similar fees, rates, terms, and conditions as applied to those attachments on the existing Pole.

(2) ***Historic and Design Districts.*** The Municipality may require reasonable, Technically Feasible, nondiscriminatory, and technologically neutral design and aesthetic requirements, stealth requirements, height limitations of no less than forty feet, and/or concealment measures in a Design District or Historic District. For Applications to place Poles in a Design District or a Historic District to deploy Small Wireless Facilities, the Municipality may propose an alternate location in the ROW within one hundred fifty (150) feet of the location set forth in the Application. The Wireless Provider shall use the Municipality's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

This section may not be construed to limit a municipality's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

(d) ***Appeals, Special Exceptions, and Variance Requirements.*** Appeals of administrative decisions and requests for special exceptions and variances from the provisions of this Ordinance, when

strict application would result in an unnecessary hardship or in the inability to deploy needed Small Wireless Facilities, shall be heard and decided by the Board of Zoning Appeals or equivalent board for Supplemental Review Districts. An Applicant seeking a special exception to construct a new Decorative Pole, Pole, or Support Structure to Collocate a Small Wireless Facility in an Underground District shall demonstrate, including certification through an engineer, that it has diligently attempted to locate the proposed Decorative Pole, Pole, Support Structure, or Small Wireless Facility outside of the Underground District and that placement of the Decorative Pole, Pole, Support Structure, or Small Wireless Facility within the Underground District is necessary to provide the needed wireless coverage or capacity, and one or more of the following conditions exist supporting a Special Exception:

(1) No existing Pole or Support Structure is located within the location search radius or to the extent a Pole or Support Structure is located within the search radius, such Pole or Support Structure:

(A) is not available for Collocation under commercially reasonable rates, terms, and conditions;

(B) cannot accommodate the Collocation of the Small Wireless Facility and meet the technical requirements necessary to deliver adequate wireless service coverage or capacity; or

(C) would require modifications exceeding the three-foot height limitation imposed in section 5(c)(1); or

(2) The only available option to deliver adequate wireless service coverage or capacity in the search radius requires modifications to an existing Pole or Support Structure exceeding the three-foot height limitation imposed in section 5(c)(1) or the installation of a new Pole or Support Structure for Collocation of a Small Wireless Facility, or

(3) The applicant has demonstrated other circumstances that, in the reasonable discretion of the applicable review body, warrant a special exception or variance.

The Applicant shall abide by the design, stealth, and concealment treatments imposed as conditions of the special exception.

(e) **Existing Supplemental Review Districts.** [Supplemental Review Districts approved by the Municipality as of the effective date of this Ordinance are listed in **Exhibit A.**] Nothing in this Ordinance shall prohibit or otherwise limit the Municipality from establishing additional Supplemental Review Districts, provided however, that facilities and structures for which a Permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the additional Supplemental Review District remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures as set out herein. If a Wireless Provider voluntarily replaces such facilities in a manner that does not comply with Section 3(e) of this Ordinance, or if a Wireless Provider voluntarily relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the additional Supplemental Review District.

(f) **Decorative Poles.** Subject to the Municipality's ability to deny an Application as set forth in this Ordinance, a Wireless Provider must be permitted to Collocate on or replace Decorative Poles when necessary to deploy a Small Wireless Facility.

(1) The Municipality may require the Collocation on a Decorative Pole or the replacement of a Decorative Pole to reasonably conform to the design aesthetics of the original Decorative Pole, provided these requirements are Technically Feasible.

(2) For Applications to Collocate Small Wireless Facilities on Decorative Poles or to replace Decorative Poles to deploy Small Wireless Facilities, the Municipality may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the Application. The Wireless Provider shall use the Municipality's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(g) **Repair of Damage.** A Wireless Provider shall repair all damage to the ROW directly caused by the activities of the Wireless Provider in the ROW and shall restore the ROW to its condition before the damage occurred. If within thirty (30) calendar days after written notice the Wireless Provider fails to the extent practicable in the reasonable judgment of the Municipality to restore the ROW to its condition prior to the damage in compliance with this subsection, the Municipality may, at the sole discretion of the Municipality, restore the ROW to such condition and charge the applicable party the reasonable, documented cost of the restoration, plus a penalty not to exceed five hundred dollars (\$500) provided; however, that the Wireless Provider may request additional time to make such repairs, and the Municipality shall not unreasonably deny such a request. The Municipality may suspend the ability of the Wireless Provider to receive any new Permits from the Municipality until the Wireless Provider has paid the amount assessed for such restoration costs. The Municipality shall not suspend such ability of any Applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute.

Section 6. Effect of Permit; Occupancy and Use Fees.

(a) **Authority Granted: No Property Right or Other Interest Created.** A Permit from the Municipality authorizes an Applicant to undertake only certain activities in accordance with this Ordinance and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the ROW. The approval of the installation, placement, maintenance, or operation of a Small Wireless Facility pursuant to this Ordinance neither constitutes an authorization nor affects any authorization a Wireless Provider may have to provide a Communication Service or to install, place, maintain, or operate any other Communications Facility, including a Wireline Backhaul Facility, in a ROW.

(b) **Duration.** Installation or Collocation for which a Permit is granted pursuant to this Ordinance must be completed within one year of the Permit issuance date unless the Municipality and the Applicant agree to extend this period, or a delay is caused by the lack of commercial power or by the lack of Communications Facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the Applicant. Approval of an Application authorizes the Applicant to: (1) undertake the installation or Collocation; and (2) subject to applicable relocation requirements and the Applicant's right to terminate at any time, operate and maintain the Small Wireless Facilities and any associated Pole covered by the Permit for a period of ten years, which may be renewed for equivalent durations so long as the installation or Collocation is in compliance with the criteria set forth in this Ordinance and the Permit. Any conditions contained in a Permit, including without limitation

conditions designed to reduce the visibility of the Small Wireless Facility and associated Pole, or to make any portion of the same appear to be something other than a Small Wireless Facility, shall apply for the entirety of the Permit term and shall include a duty to maintain and replace components as necessary to ensure continued compliance.

(c) **Occupancy and Use Fees.** The Municipality hereby determines that the following Rates for occupancy and use are reasonable and nondiscriminatory. For each Small Wireless Facility, the Municipality hereby imposes the following Rates:

(1) one hundred dollars (\$100) per year for each Small Wireless Facility Collocated on any existing or replacement Pole, including an existing or replacement Municipality Pole; and

(2) two hundred dollars (\$200) per year for each Small Wireless Facility Collocated on a new Pole, other than a replacement Pole, which two-hundred-dollar (\$200) Rate shall cover the new Pole and the Small Wireless Facility Collocated on it.

These Rates shall apply to a Wireless Provider regardless of whether the Wireless Provider is subject to a business license tax that is or may be imposed upon it pursuant to S. C. Code Section 58-9-2220 or a franchise, consent, or administrative fee that is or may be imposed upon it pursuant to S.C. Code Section 58-9-2230. These Rates shall apply to a Communications Service Provider regardless of whether the Communications Service Provider is subject to a franchise fee that is or may be imposed upon it pursuant to S.C. Code Section 58-12-330.

Section 7. Removal, Relocation or Modification of a Small Wireless Facility in the ROW.

(a) **Widening, Repair, Reconstruction, and Relocation.** If, in the reasonable exercise of police powers, the Municipality requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of Poles, Support Structures, or Small Wireless Facilities as a result of a public project, a Wireless Provider shall relocate Poles and Support Structures that such Wireless Provider has installed in the ROW for the Collocation of Small Wireless Facilities pursuant to this Ordinance at no cost to the Municipality if such Poles and Support Structures are found by the Municipality to unreasonably interfere with the widening, repair, reconstruction, or relocation project or the public project. If widening, repair, reconstruction, or relocation is required as a condition or result of a project by a Person other than the Municipality, such Person shall bear the cost of relocating such Poles or Support Structures and any Communications Facilities on such Poles or Support Structures.

(b) **Emergency Removal or Relocation of Facilities.** The Municipality retains the right to cut or move any Small Wireless Facility, Pole, or Support Structure located within the ROW as the Municipality, in its reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the Municipality shall notify the Wireless Provider and provide opportunity to move its own Small Wireless Facilities, Poles, or Support Structures prior to the Municipality cutting or removing a Small Wireless Facility, Pole, or Support Structure and the Municipality shall notify the Wireless Provider after cutting or removing a Small Wireless Facility.

(c) **Abandonment of Facilities.** The Applicant or the Person that owns or operates the Small Wireless Facility Collocated in the ROW may remove its Small Wireless Facilities at any time from the ROW upon not less than thirty (30) days' prior written notice to the Municipality and may cease paying to the Municipality any applicable Fees and Rates for such use, as of the date of the actual removal of the Small

Wireless Facilities. In the event of such removal, the ROW shall be, to the extent practicable in the reasonable judgment of the Municipality, restored to its condition prior to the removal. If the Applicant fails, to the extent practicable in the reasonable judgment of the Municipality, to return the ROW to its condition prior to the removal within ninety (90) days of the removal, the Municipality may, at the sole discretion of the Municipality, restore the ROW to such condition and charge the Applicant the Municipality's reasonable, documented cost of removal and restoration, plus a penalty not to exceed five hundred dollars (\$500). The Municipality may suspend the ability of the Applicant to receive any new Permits from the Municipality until the Applicant has paid the amount assessed for such restoration. The Municipality shall not suspend such ability of any Applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute.

(d) **Abandonment by Inaction.** At any point when a Wireless Provider fails to pay any required Fee or Rate, and fails to respond within sixty (60) days to a written inquiry from the Municipality as to whether the Wireless Provider intends to continue to operate a Small Wireless Facility or Support Structure, for whatever reason, the Small Wireless Facility shall be deemed abandoned and the Municipality may, at its sole option, remove all or any portion of the Small Wireless Facility or Support Structure, or take other action as authorized by law, including recovery of actual costs incurred in removing the Small Wireless Facility or Support Structure.

Section 8. Attachment to Municipality Poles.

(a) **Annual Rate.** The rate to Collocate a Small Wireless Facility on a Municipality Pole shall be fifty dollars (\$50) per year. This rate is in addition to reimbursement to the Municipality for any expenses for make-ready work. The Municipality reserves the right to require a pole attachment agreement to further define the terms and conditions of attachments to Municipality Poles. The rates specified in this section shall not apply to poles owned, or operated and accounted for as an asset of, a municipal electric utility.

(b) **Make-Ready.** The Rates, Fees, terms, and conditions for make-ready work to Collocate on a Municipality Pole must be nondiscriminatory, competitively neutral, commercially reasonable, and in compliance with this Ordinance.

(1) The Municipality shall provide a good faith estimate for any make-ready work necessary to enable the Pole to support the requested Collocation by a Wireless Provider, including Pole replacement if necessary, within sixty (60) days after receipt of a complete Application. Alternatively, the Municipality may require the Wireless Provider to perform the make-ready work and notify the Wireless Provider of such within the sixty-day period. If the Wireless Provider or its contractor performs the make-ready work, the Wireless Provider shall indemnify the Municipality for any negligence by the Wireless Provider or its contractor in the performance of such make-ready work and the work shall otherwise comply with applicable law.

(2) Make-ready work performed by or on behalf of the Municipality, including any Pole replacement, must be completed within sixty (60) days of written acceptance of the good faith estimate by the Applicant. The Municipality may require replacement of the Municipality Pole only if it demonstrates that the Collocation would make the Municipality Pole structurally unsound.

(3) The Person owning, managing, or controlling the Municipality Pole must not require more make-ready work than required to meet Applicable Codes or industry standards.

Fees assessed by or on behalf of a Municipality for make-ready work, including any Pole replacement, must not include costs related to preexisting or prior damage or noncompliance; exceed either actual costs or the amount charged to other Communications Service Providers for similar work on similar types of Municipality Poles; or include any revenue or contingency-based consultant's fees or expenses of any kind.

(4) A Wireless Provider Collocating on a Municipality Pole is responsible for reimbursing third parties for their actual and reasonable costs of any make-ready work reasonably required by the third party to accommodate the Collocation.

(c) ***Municipal Utilities Excluded.*** Nothing in this section shall be construed to affect the authority of a municipal electric utility to deny, limit, restrict, or determine the Rates, Fees, terms, and conditions for the use of or attachment to a Pole owned, or operated and accounted for as an asset of, a municipal electric utility.

(e) ***Non-Exclusivity; Non-Discrimination.*** A Person owning, managing, or controlling Municipality Poles in the ROW may not enter into an exclusive arrangement with any Person for the right to attach to such poles. Subject to a Municipality's ability to deny an Application as set forth in this Ordinance, a Municipality shall allow the Collocation of Small Wireless Facilities on Municipality Poles on nondiscriminatory terms and conditions in compliance with this Ordinance.

Section 9. Indemnification, Insurance, and Bonds.

(a) ***Indemnity.*** With regard to Small Wireless Facilities, Poles, and Support Structures that are subject to this Ordinance, the Wireless Provider shall indemnify and hold the Municipality and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, to the extent that a court of competent jurisdiction finds that the negligence of the Wireless Provider while siting, installing, maintaining, repairing replacing, relocating, permitting, operating, or locating Small Wireless Facilities, Poles, and Support Structures pursuant to this Ordinance caused the harm.

(c) ***Insurance.*** The Municipality may require a Wireless Provider to have in effect insurance coverage consistent with this section, so long as the Municipality imposes similar requirements on other ROW users and such requirements are reasonable and nondiscriminatory. The Municipality may require a Wireless Provider to furnish proof of insurance prior to the effective date of a Permit. The Municipality may not require a Wireless Provider to obtain insurance naming the Municipality or its officers and employees as additional insureds.

(c) ***Bonds.*** The Municipality may impose bonding requirements for Small Wireless Facilities if the Municipality imposes similar requirements in connection with permits issued for other ROW users. Such bonds may provide for the removal of abandoned or improperly maintained Small Wireless Facilities, including those that the Municipality determines must be removed to protect public health, safety, or welfare; restoration of the ROW; and recoupment of Rates or Fees that have not been paid by a Wireless Provider in over twelve months. Bonding requirements may not exceed two hundred dollars (\$200) per Small Wireless Facility. For Wireless Providers with multiple Small Wireless Facilities within the Municipality, the total bond amount across all facilities may not exceed ten thousand dollars (\$10,000) and that amount may be combined into one bond instrument.

Section 10. Severability.

In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or work of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

Section 11. Effective Date.

This Ordinance shall take effect (xxx) days after adoption.

ADOPTED: _____, 2021

ATTEST: _____

APPROVED:

_____, Mayor

_____, [City/Town] Clerk

APPROVED AS TO LEGAL FORM:

_____, [City/Town] Attorney

Exhibit A

Existing Supplemental Review Districts

[DRAFTING NOTE: The Small Wireless Facilities Deployment Act allows special treatment within design districts, historic districts, and underground districts. These three types of districts are referred to together in the model ordinance as "Supplemental Review Districts." To be eligible for special treatment under the Act, such districts must have been formally designated by the Municipality. By listing all existing Supplemental Review Districts in this Exhibit, the Municipality may ensure that these districts have been appropriately designated.]

If the Municipality has any areas within its jurisdiction that apply special standard for architectural or aesthetic protection (design districts), historic preservation (historic districts), or underground concealment of utility infrastructure (underground districts), those districts should be listed in this exhibit.

References to this exhibit in the body of the ordinance are highlighted. If the Municipality has no districts of a particular type as of the date of adoption, the relevant, highlighted references in the body of the document should be deleted.]

Exhibit B

Design Manual

[DRAFTING NOTE: The Small Wireless Facilities Deployment Act allows the Municipality to adopt a Design Manual. As implemented in the model ordinance, the Design Manual serves two functions:

- 1. The Design Manual should contain all aesthetic, stealth, and concealment requirements applicable to small wireless facilities. For example, the Design Manual may require that all facilities be painted a uniform color. The ordinance itself says only that small wireless facilities should be “no more visible” than other infrastructure. Additional details and conditions may be required by the Design Manual.*
- 2. The Design Manual may establish pre-approved deployments that do not need separate aesthetic review. For example, the Design Manual may provide that all deployment meeting certain size, height, color, and stealth requirements will be automatically approved as to appearance.*

References to the Design Manual in the body of the model ordinance are highlighted. If the Municipality chooses not to adopt a Design Manual, these highlighted references should be deleted.]