



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

MEETING AGENDA
June 10, 2021
6:35 PM

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

FACE COVERINGS ARE OPTIONAL FOR THOSE WHO ARE FULLY VACCINATED.

Updated Face Mask Policy at Town Hall is as follows:

- Anyone wishing to wear a mask, regardless of vaccine status, is welcomed to continue doing so.
- Vaccinated individuals are no longer required to wear a mask, indoors or outside.
- Non-vaccinated individuals have the option to wear or not wear a mask outside.
- Non-vaccinated individuals must continue wearing a mask inside while around others.

- I. CALL TO ORDER
- II. COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT
- III. INTRODUCTIONS
- IV. APPROVAL OF MARCH 11, 2021 MINUTES
- V. PUBLIC COMMENTS
- VI. STAFF COMMENTS
- VII. DISCUSSION ON ZLDR AMENDMENTS TO REGULATE SMALL CELL WIRELESS FACILITIES

Planning Commission will 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: JULY 8, 2021
- XI. ADJOURN

The Planning Commission met via Zoom Video on Thursday, March 11, 2021 at 6:35 p.m. Commissioners present: Deborah Bidwell, Mark Maher, Ed Steers, Vice Chair, Zennie Quinn, and Bill Lyon, Chairman, who presided. Also: Kristen Crane, Planning Director, Flannery Wood, Planner II, 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 6:35 p.m. 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 and extended a special welcome to new Commissioner Mark Maher.

Approval of December 10, 2020 Minutes: Minutes were approved upon a motion by Commissioner Steers, seconded by Chairman Lyon and passed unanimously.

Public Comments: None.

Staff Comments: None

Comprehensive Plan 5-Year Review: Planning Director Kristen Crane announced that the Planning Commission would be reviewing the edits recommended by Town Council at its January 21 meeting. She said recommendations made by the Planning Commission tonight would be sent to Town Council for a First Reading on March 18 and the Second Reading and Public Hearing on April 15. She added that when the Comp Plan was sent to Town Council the edits were in multiple colors but is now in yellow for easier reading.

Mrs. Crane reviewed the changes recommended by Town Council:

- Strike the word *services* from ecosystems; which is listed in several other places, including in the Land Use Element Goal also stricken.
- Town Council questioned the definition of the word *mutualistic* and recommended changing the language to read: *Encourage redevelopment to improve current aesthetics and diversity of amenities in the Town's commercial areas*. Mrs. Crane noted that the original word used was positive and it was changed to mutualistic by the Planning Commission, but Town Council struck both of those words. She pointed out the other areas where mutualistic appeared (Land Use Element/Inventory) and was stricken.
- *Vegetation:* Town Council discussed that the language in that section is not specific to James Island and is more generic for the County so the last sentence that talks about countywide vegetation was struck. Mrs. Crane said she is researching information specific to James Island and is waiting to hear back from others more qualified to address this. She added that a section was added regarding the formation of the Town's Trees Advisory Council; its functions, and interns to survey trees and input information in the GeoThinQ program.

- *Community Facilities Element, Parks and Recreation Services*: Town Council recommended adding a goal *CF9 to read*: to **explore opportunities to create and maintain more active recreational activities and facilities for the youth of James Island.**

Mrs. Crane said changes the Planning Commission makes would go back to Town Council and Chairman Lyon opened the floor for discussion.

Commissioner Bidwell said she thought people didn't quite understand what ecosystem services are and that is okay. She said the way it is phrased now in a couple of places where it talks about preserving the suburban character, ecosystems makes it sound like we are trying to preserve suburban ecosystems, and that was not her intention. She said with the phrasing of it, the adjective suburban should not modify the noun ecosystems. Commissioner Bidwell thought we could add *natural ecosystems*. She commented that ecosystem services are just what nature gives us for free, i.e., the marsh gives us blue crabs and fishes and it filters our waters, and the trees gives cleaner air. The marsh absorbs the flood waters, so ecosystem services are what healthy ecosystems do. She said for the benefit of all living creatures there, including humans, its fine to scratch it but she is not interested in maintaining suburban ecosystems but is interested in maintaining nature and would like healthy natural ecosystems that keeps us from flooding and keeps us fed. She suggested using the words *natural ecosystem in the area*.

Mrs. Crane said that she wanted to be sure in the places where the word is stricken that it makes sense. Commissioner Bidwell said she did not know if the changes needed to be in all of the places, but the word services should be taken out anywhere it states maintaining the suburban character (Land Use Element Goal).

Housing Element Goal: There was discussion that the words *high quality* before the word *resilient* was redundant. Commissioner Maher requested striking the words *high quality*. Sentence to read: *Encourage resilient, affordable housing for people of all ages, incomes, and physical abilities.*

After discussion. Chairman Lyon asked for a motion on the recommended changes. Commissioner Bidwell moved, Commissioner Steers seconded, and passed unanimously.

Election of Planning Commission Officers: Chair and Vice Chair: Mrs. Crane announced that local Planning Commissions must elect one of its members as Chairperson and one as Vice Chairperson for one year terms. These appointments will begin immediately following the vote through 2021.

Chairman: Commissioner Steers moved for the nomination of Bill Lyon to serve as Chairman, Commissioner Quinn seconded. There were no other nominations and the motion passed unanimously.

Vice Chairman: Chairman Lyon moved for the nomination of Ed Steers to serve as Vice Chairman, Commissioner Quinn seconded. There were no other nominations and the motion passed unanimously.

Chair's Comments: Chairman Lyon welcomed new Commissioner Mark Maher and hopes to meet him in person once we are able to.

Commissioners Comments: Commissioner Steers expressed wanting to meet in person once we are able to and is looking forwarding to that.

Next Meeting Date: The next Planning Commission meeting is scheduled for April 8, 2021.

Adjourn: There being no further business to come before the Planning Commission, the meeting adjourned at 7:04 p.m.

Respectfully submitted:

Frances Simmons
Town Clerk and Secretary to the Planning Commission

DRAFT

RESOLUTION #2021-06

A RESOLUTION REQUESTING THE PLANNING COMMISSION RECOMMEND REGULATIONS FOR THE PLACEMENT OF SMALL CELL WIRELESS FACILITES

WHEREAS, the South Carolina General Assembly, through 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"), has established the terms, conditions, procedures, rates, and fees upon which Small Wireless Facilities may be deployed in the right of way; and

WHEREAS, these structures and facilities must be installed and maintained so as not to create a safety hazard or obstruct or hinder the public's safe use of the right of way; and

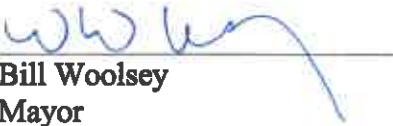
WHEREAS, the Town desires to outline regulations within its permit application process to include design aesthetic criteria as allowed by state law; and

WHEREAS, the Planning Commission is charged with making recommendations to Town Council regarding text amendments to the Town of James Island Zoning and Land Development Regulations; and

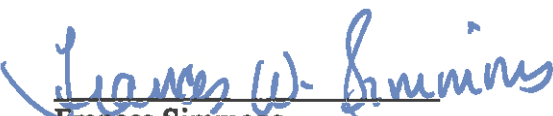
NOW, THEREFORE, BE IT RESOLVED BY THE JAMES ISLAND TOWN COUNCIL THAT:

1. The Town of James Island respectfully requests that the Planning Commission review and recommend appropriate ordinance amendments and guidelines as it pertains to small cell wireless facility deployment within the Town of James Island's jurisdiction.
2. This Resolution shall become effective upon its adoption and approval.

Adopted this 20th day of May, 2021


Bill Woolsey
Mayor

ATTEST


Frances Simmons
Town Clerk

Taking Action on Small Wireless Facilities

As part of the ongoing move to 5G networks, telecommunications companies are deploying small wireless facilities. These are low-powered wireless access points, offering high data transmission rates and faster data for users than has been available through traditional cell towers.

The improved speed of the facilities comes with limited range, however, so there will be many of them positioned on utility poles in high-demand areas. They are likely to appear in densely populated areas, like downtown districts, or in areas with high periodic demand, like beaches or football stadiums.

Telecommunications companies have pushed for preemptive laws and regulations at the federal and state level to help them deploy these facilities. In South Carolina, the Small Wireless Facilities Deployment Act took effect in September 2020. The new law preempts most local control over deployment within municipal rights-of-way. Even so, there are still several proactive steps cities and towns can take using the new model ordinance distributed by the Municipal Association of SC.

What's in the new law?

The Small Wireless Facilities Deployment Act requires municipalities to allow the deployment of such facilities within their rights-of-way on certain conditions:

- Local land use rules must treat small wireless facilities as a permitted use, subject only to administrative review.
- The municipality must approve or deny applications for the facilities within 60 days. They must also approve or deny applications for new, modified or replacement poles within 90 days.
- The law limits municipal fees and rates charged for the installation and maintenance of small wireless facilities.
- The law allows municipalities to enforce provisions that impose reasonable aesthetic, stealth and concealment requirements on small wireless facilities. Municipalities may also have different — and more stringent — rules for decorative poles within design districts, historic districts, and underground utility districts.

Changes from the previous model ordinance

In general, the new law is consistent with the Association's previous model ordinance. The law also allows municipalities to enforce regulations on the appearance of small wireless facilities, as long as those rules comply with the law.

Many local ordinances already in effect have aesthetic requirements that will be considered compliant with the new law. However, two key changes will likely require local action:

- Municipalities must identify and designate design districts, historic districts, and underground utility districts by official action. Many already recognize design

districts and historic districts through zoning ordinances, but they may not have not officially designated underground districts, and will need to do so.

- Previous law — and the model ordinance — exempted those retail telecommunications services who pay business license taxes under SC Code Section 58-9-2220 from paying several fees for small wireless facilities. The exemption covered application, attachment and occupancy fees. The new law removes this exemption, so municipalities may now charge the full fees and rates permitted by the law.

Local actions required

The Municipal Association has released a [new model ordinance](#) for small wireless facilities. Municipalities that adopted the prior model ordinance should plan to repeal their existing ordinances and to replace it with the new version.

The revised model ordinance gives cities and towns a method for designating design, historic and underground utility districts. It also reflects the fees and rates allowed by the new law and removes the exemption for retail telecommunications services.

Municipalities that adopted local ordinances that they did not base on the model ordinance should review those ordinances to ensure their ordinance complies with the law. Given the growing importance of small cell facilities, those that have not yet adopted any regulations should consider using the model ordinance.

[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;

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(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.

MASC Model Ordinance

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.]



Ratification
Number 2018-154

A N O R D I N A N C E

ESTABLISHING REQUIREMENTS IN THE CITY OF CHARLESTON FOR SMALL WIRELESS FACILITY/PERMITTING AND PLACEMENT IN RIGHTS OF WAY AS AMENDED

Section 1. Findings.

WHEREAS, the City of Charleston (“City”) finds it necessary to establish general standards for Wireless Infrastructure Providers or Wireless Service Providers to deploy and maintain wireless networks in the City’s Public Right of Way (“ROW”) using Small Wireless Facilities; and

WHEREAS, The City must balance competing interest of its citizens and State and Federal laws concerning the rights of all parties; and

WHEREAS, the City specifically finds that this Ordinance will:

1. Minimalize visual impact and bulk in the ROW and architecturally integrate Small Wireless Facilities with its surroundings;
2. Preserve unobstructed and ADA compliant walkways, roadways, and paths of travel while accommodating electrical, water, sewer, and communications services;
3. Ensure that Small Wireless Facilities will conform to all applicable health and safety regulations to protect the public;
4. Enhance the ability of Wireless Service Providers or Wireless Infrastructure Providers to deploy wireless infrastructure quickly, effectively, and efficiently so that

residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;

5. Provide standards for Small Wireless Facilities in the City's ROW to provide a uniform look and feel, and ensure that applicants are treated equally; and

6. Provide the City with sufficient information to make an informed and timely decision on applications.

Section 2. No person or entity shall locate Small Wireless Facilities, as defined in the Small Wireless Facility Right of Way Guidelines ("Design Guidelines"), in rights of way owned or controlled by the City without first:

1. Obtaining a Franchise Agreement from the City for the use of any ~~rights-of-way~~ ROW owned or controlled by the City of Charleston ("City") if the person or entity locating the Small Wireless Facilities also will be owning or operating fiber optic cables in the right-of-way;

2. Obtaining approved Engineering Permits, a City Small Wireless Facilities Application ("WFA") and other required permits from the City, as well as provide all plans, documentation, drawings ~~or~~ and information required by the City as set forth in its ordinances and laws. Without limiting any requirements, all excavations of any type shall comply with the City of Charleston Department of Public Service Engineering Division's "Steel Plates Requirements used in Connection with Roadway Utility Excavations" (April 2013) and City of Charleston Department of Public Service Engineering Division's "Utility Pavement Cut and Repair Guidelines) (October 2015). Details and additional required documents are noted on the Engineering Permit Application. Additional conditions, limitations ~~or~~ and requirements may be found on the "PERMIT CONDITIONS" document

or other requirements on file with the City's Department of Public Service and on the Engineering Permit Application;

3. ~~Obtaining and providing~~ Certifying to the City in written writing confirmation of that, for each co-location of a Small Wireless Facility, permission from the owner of the pole or other structure has provided permission to co-locate the Small Wireless Facility on its pole or other structure for which the Small Wireless Facility is being requested;

4. Providing a completed WFA, a copy of which is attached hereto and incorporated herein by reference as Exhibit A with attachments 1 and 2 along with all required information or documentation;

5. Obtaining approval of a WFA for each proposed location. Each WFA shall include:

- a) Sealed drawings showing proposed installation(s);
- b) A MPE Maximum Permissible RF Exposure report as set forth in Section VI (E) of the Design Guidelines; and
- c) All other information required by the WFA;

6. Meeting the requirements of the ~~Small Cell Infrastructure Right of Way Design Guidelines~~ ("Design Guidelines") attached hereto and incorporated herein by reference as Exhibit B; and

7. Paying all fees for reviews, inspections, and compliance as set forth in Attachment 2 and possessing a valid business license.

Section 3. All WFA, ~~and~~ Engineering Permits, and other requirements set forth in this Ordinance shall be reviewed and approved or denied based upon the City's requirements as set forth or incorporated into this Ordinance by the City's Design Review Committee ("DRC"). The DRC shall act on each application WFA within the time frames mandated by applicable federal law. Incomplete or batched applications shall likewise be processed in

accordance with applicable federal laws as to time periods for acting on such permits or holding them in abeyance.

Section 4. An adverse decision shall be subject to litigation in the Court of Common Pleas for Charleston County or federal district court for the District of South Carolina (Charleston Division).

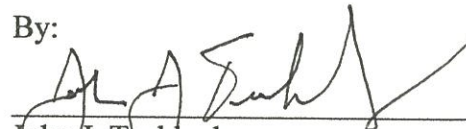
Section 5. Poles, equipment, or related construction relating to a Small Wireless Facility shall not cause any violations of the Americans with Disabilities Act or interfere with any accessibility to public walkways;

Section 6. In the event of any conflicts in any Small Wireless Facility permitting and placement requirements and any other applicable law, the more restrictive shall apply. ~~Where applicable, "more restrictive" includes restrictions against the City and others on what may be required of Small Wireless Facilities Providers.~~

Section 7. This Ordinance shall become effective upon ratification.

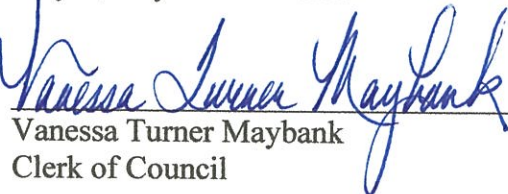
Ratified in City Council this 27th day of November in the Year of Our Lord 2018, and in the 243rd year of the Independence of the United States of America.

By:



John J. Tecklenburg
Mayor, City of Charleston

ATTEST:



Vanessa Turner Maybank
Clerk of Council



City of Charleston Small Wireless Facilities Application

		Existing Height	Proposed Height
APPLICATION TYPE	<input type="checkbox"/>	New Support Structure	
	<input type="checkbox"/>	Collocation on Eligible Support Structure	
	<input type="checkbox"/>	Replace Existing Structure	
	<input type="checkbox"/>	Other	

Applicant or Lessee Name	
Applicant or Lessee Address	
Applicant or Lessee Phone Number	
Applicant or Lessee Email Address	

Wireless Service Provider (WSP) Company Name	
WSP Contact Name	
WSP Address	
WSP Phone Number	
WSP Email	
In Case of Emergency Contact Name (NOCC)	
In Case of Emergency Contact Phone Number (NOCC)	

Proposed Structure Type	
Site Location-Address	
Nearest Intersection	
Utility Pole Number	
Site Location-Latitude/Longitude	
Support Structure Owner Name	
Structure Owner Address	
Structure Owner Email	



City of Charleston Small Wireless Facilities Application

Antenna Information		Equipment Information	
Antenna Manufacturer(s)		Equipment Enclosure(Shroud)- (LxWxH in ft)	
Antenna Type(s)		Transmitting or Wireless Equipment Manufacturer	
Antenna Model Number(s)		Transmitting or Wireless Equipment Model Number	
Antenna Dimensions (LxWxD in inches)		Battery Type/Quantity	
Antenna Weight (lbs.)		Electric Service (Volts and Amps)	
Antenna Configuration (Omni, Sector, Directional)		Separate Electric Meter Required (yes or No)	
Azimuth(s) (degrees) <i>if not omni</i>		Required Backhaul (Wireless, Fiber, Copper)	
Antenna RAD Center (feet above grade level)		If wireless backhaul	
Transmit Frequency(ies)		Antenna Manufacturer and Model	
Receive Frequency (ies)		Antenna Dimensions	

Supporting Documents (uploaded Y/N)	Comments
Validation of property interest (i.e. certification of obtained approval from 3 rd party PSS owner)	
Antenna, Equipment, Pole or Shroud/Radome Specification Sheets. Can be included as part of the Construction Drawings	
Construction drawings with site plan with sufficient detail to adequately identify lease/license area on pole and on ground and determine consistency with applicable safety and design requirements (stamped and sealed by a South Carolina licensed professional engineer as to standards relevant to engineering)	
Elevation drawing of pole or tower	
Structural Analysis (calculations or certification showing applicable engineering materials, electrical and safety standards are met including structural integrity and weight bearing capacity from PSS owner or by a licensed	



City of Charleston Small Wireless Facilities Application

professional engineer as to standards relevant to engineering)	
Photo Simulations (minimum of 3 sides)	
Other documents submitted	
Applicable fees paid	

As an Authorized Signatory of Applicant/Carrier

Date

Application Approved

Date

Check if subject to special conditions

Special Conditions:

ATTACHMENT 1 TO CITY OF CHARLESTON SMALL WIRELESS FACILITY APPLICATION

A) **Indemnification.** To the maximum extent permitted by South Carolina law, the Applicant shall indemnify, save harmless, and defend the City, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, reasonable costs of investigation and litigation, reasonable attorneys' fees and expenses, reasonable consultants' fees and expenses, and reasonable expert witnesses' fees and expenses, judgment or liability of any kind arising out of Applicant's agent or any person or entity acting on Applicant's behalf for or relating to Applicant's ~~with the~~ installation, construction, operations, maintenance, or condition of the Small Wireless Facility. The Applicant is not required to indemnify or hold harmless the City, its officers and employees, as provided herein, to the extent caused by, resulting from, or arising out of the active negligence or intentional actions of one or more officers or employees of the City or others acting ~~through them or~~ on their behalf.

B) **Assumption of Risk by Applicant.** Except as ~~qualified and limited in A)~~ set forth above, the Applicant shall assume all risks in the operation of the Small Wireless Facilities and shall be solely responsible and answerable for any and all injuries to persons or property arising out of the existence of the Small Wireless Facilities approved and installed pursuant to the appropriate permits. The amounts and types of required insurance coverage, as set forth below shall in no way be construed as limiting the scope of indemnity set forth in this section.

C) **Insurance.**

General Liability and Commercial Automobile Insurance Required. Applicant shall obtain and maintain, at all times during the term of its Small Wireless Facilities permit(s), approved and installed pursuant to appropriate permits or General Liability insurance and Commercial Automobile Liability insurance protecting Applicant in an amount not less than One Million (\$1,000,000) Dollars per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than One Million, Two Hundred Thousand (\$1,200,000) Dollars annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its officers, and employees as additional insureds with regard to ~~as respects~~ any covered liability arising out of Applicant's performance of work related to Small Wireless Facilities approved and installed pursuant to appropriate permits. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Applicant shall be responsible for notifying the City of such change or cancellation.

Workers' Compensation Insurance. Regardless of the number of employees, Applicant shall comply with the provisions of the South Carolina Workers' Compensation Act and maintain coverage for employees. Applicant shall obtain and maintain, at all times during the term of this WFA permit, statutory workers' compensation and employer's liability insurance in an amount not less than the greater of (a) any amounts required by South Carolina state law.

Insurer Criteria. Any insurance provider of Applicant shall be admitted and authorized to do business in the State of South Carolina and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this WFA, Applicant shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) that Applicant's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; (c) that Applicant's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City; and (d) the certificate(s) of insurance with endorsements and notices shall be mailed to the City's Corporation Counsel.

Severability of Interest. Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

D) **Successors.** All provisions shall be binding upon the Applicant, its successors, or and assignees.

E) This permit shall continue in effect for a period of 5 years from its date of issuance.

DATED: _____

Agreed to As an Authorized Signatory of
Applicant

**ATTACHMENT 2 TO CITY OF CHARLESTON SMALL WIRELESS FACILITY
APPLICATION**

(a) \$500 for a single up-front processing application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, and (b) \$270 per Small Wireless Facility per year for managing deployments in the Right of Way, and (c) all applicable business license fees.

Small Cell Infrastructure Right-of-Way Design Guidelines



City of Charleston

I. Background and Purpose

The purpose of these guidelines is to establish general standards for Wireless Infrastructure Providers or Wireless Service Providers to deploy and maintain wireless networks in the City of Charleston (“City”) Public Right of Way (“ROW”) using Small Wireless Facilities. In addition to the standards set forth in these guidelines, applications must follow all Applicable Codes. The guidelines address federal and state laws for the siting, construction, installation, collocation, modification, operation, and removal of wireless communications facilities in the ROW. The goals are to:

A. Preserve The Character Of Neighborhoods, Corridors, And Districts

To the extent possible, minimize visual impact and bulk in the ROW by architecturally integrating the Small Wireless Facility with its surroundings.

B. Preserve the Right-of-Way

The primary purpose shall be unobstructed and ADA compliant, walkways, roadways, and paths of travel while accommodating electrical, water, sewer, and communications services.

C. Ensure Health and Safety

Ensure that wireless communications facilities will conform to all applicable health and safety regulations to protect the public.

D. Enhance Deployment of Technology

Enhance the ability of Wireless Service Provider or Wireless Infrastructure Provider to deploy wireless infrastructure quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.

E. Standards and Consistency

Provide standards for the design of wireless communications facilities in the City’s ROW to provide a uniform look and feel and that applicants are treated equally; and

F. Establish Application requirements

Provide the City with sufficient information to make an informed and timely decision on applications.

II. Definitions

Definitions of terms in Design Guidelines shall be the same as those definitions listed in An Ordinance Addressing City of Charleston Cell Permitting and Placement as may be amended from time to time. In addition to those definitions the following definitions are used in this document:

A. “Antenna”

means communications equipment that transmits and/or receives electromagnetic signals used for the provision of Wireless Services or other wireless communications. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes;

B. “Applicable Codes”

means uniform building, fire, safety, electrical, plumbing and mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the City or otherwise are applicable in the City;

C. “Collocate”

means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Facility. “Collocation” has a corresponding meaning;

D. “Communications Facility”

means, collectively, the equipment at a fixed location or locations that enables FCC-licensed or FCC-authorized communications between user equipment and a communications network, including: (i) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing;

E. “Communications Service Provider”

means a cable operator, as defined in 47 U.S.C. § 522(5), a provider of information service, as defined in 47 U.S.C. § 153(24); or a provider of telecommunications service, as defined in 47 U.S.C. § 153(53);

F. “Decorative Pole”

means a City owned Pole that is specially designed and placed for aesthetic purposes, or that has specifically designed aesthetic characteristics such as shape, color, or texture, other than plain wood poles as commonly may be used in ROW for general utility or lighting services;

G. “FCC”

means the Federal Communications Commission of the United States.

H. “Historic Property”

means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the United States Secretary of the Interior (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). Additionally, any district or building defined as Historic in its zoning classification or relevance to the history of the City;

I. “Permit”

means a written authorization (in electronic or hard copy format) required by the City to perform an action or initiate, continue, or complete installation of a Communications Facility, or an associated Support Structure, Pole, or Tower;

J. “Pole”

means a pole, such as a utility, lighting, streetlight Pole, traffic, or similar pole, not exceeding fifty (50) feet in height above grade, made of wood, concrete, metal or other material, located or to be located within the Public ROW. A Pole does not include a Tower or Support Structure;

K. “Replacement”

means, in connection with an existing Pole, Support Structure or Tower, replacement of same with a new structure, similar in design, size and scale to the existing structure and in conformance with current City regulations, in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility. In connection with replacement of a Pole or Tower to support Collocation of a Wireless Facility, similarity in size and scale shall be evaluated consistent with 47 C.F.R. 1.40001 Subpart b(7);

L. “Small Wireless Facility”

means a Wireless Facility installed by a Wireless Services Provider or Wireless Infrastructure Provider Communications Facility (including, without limitation, any strand-mounted Antenna) that has a volume of no more than twenty-eight (28) cubic feet in volume. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and wired telecommunications services;

M. “State”

means the State of South Carolina;

N. “Support Structure” or “Structure”

means a building, a billboard, a water tank or any other structure to which a Communications Facility is or may be attached. Support Structure does not include a Pole or a Tower;

O. “Tower”

Means any structure in the ROW of which sole purpose is to support Wireless Services;

P. “Wireless Infrastructure Provider”

means any Person, including a Person authorized to provide telecommunications service in the State, that builds or installs and/or operates Wireless Facilities or Poles, Towers or Support Structures on which Wireless Facilities are or are intended to be used for Collocation, but that is not a Wireless Services Provider;

Q. “Wireless Services”

means personal wireless services as that term is defined in 47 U.S.C. § 332(c)(7)(C)(i); and

R. “Wireless Services Provider”

means a Person who provides Wireless Services.

III. Categories of Public Right of Way Design Districts

A Public Right of Way Design Districts (“District”) is determined by the zoning designation that is closest to the Public ROW where a Small Wireless facility is proposed to be located. In the event that a Public ROW is adjacent to multiple zoning districts, the zoning district that is closest to the proposed Small Wireless Facility shall be applied to the proposed installation. In order to classify and regulate the use and implement development and design guidelines for Small Wireless Facilities in the ROW, the City is divided into the following ROW Design Districts as follows:

A. Peninsula

For the purpose of these Design Guidelines, the Peninsula shall include those areas adjoining and or defined on the City Zoning map as

- Old City Height District
- Areas South of the Old City District Boundary
- Old and Historic District
- Landmark Overlay
- Old City District

B. DRB Corridors

For the purpose of these Design Guidelines, DRB Corridors shall be defined as those corridors and ROW adjoining those corridors that are listed by the Design Review Board Official List of Corridors Under Review as posted on the City website and may be updated from time to time.

C. Parks

For the purpose of these Design Guidelines, Parks shall be defined as ROW adjoining properties zoned as parks, any greenway, exclusive walkways, and/or bikeways.

D. Residential District.

For the purposes of these Design Guidelines, Residential Districts include any ROW that are adjacent to properties that have the following current zoning designations:

RR-1	Rural residential district (single family detached dwellings only)
SR-1	Single family (detached dwellings only) residential district
SR-2	Single family (detached dwellings only) residential district
SR-3	Single family residential district
SR-4	Single family residential district
SR-5	Single family residential district

SR-6	Single family (detached dwellings only) residential district
SR-7	Single family (detached dwellings only) residential district
SR-8	Single family (detached dwellings only) residential district
STR	Single and two family residential district
DR-6	Diverse residential (front yards required) district
DR-9	Diverse residential (front yards required) district
DR-12	Diverse residential (front yards required) district
DR-1F	Diverse residential (front yards required) district
DR-1	Diverse residential (front yards not required) district
DR-2F	Diverse residential (front yards required) district
DR-2	Diverse residential (front yards not required) district
DR-3	Diverse residential (single manufactured homes, mobile homes, mobile home parks or non-mobile home dwellings) district
DR-4	Diverse residential (elderly housing) district
RO	Residential office district
GP	Gathering place district
N	Neighborhood district

E. Commercial District.

For the purposes of these Design Guidelines, Commercial Districts include any ROW that are adjacent to properties that have the following current zoning designations:

GO	General office district
CT	Commercial transitional district

LB	Limited business district
GB	General business district
UC	Urban commercial district
MU-1	Mixed use district
MU-2	Mixed use district
JC	Job Center district
BP	Business park district

F. Industrial District.

For the purposes of these Design Guidelines, Industrial Districts include any ROW that are adjacent to properties that have the following current zoning designations:

LI	Light industrial district
HI	Heavy industrial district

G. Special Districts.

For the purposes of these Design Guidelines, Special Districts include any ROW that are adjacent to properties that fall within the following current zoning districts:

1. **Overlay Zones.**
2. **Daniel Island District.**
3. **Canterbury Woods District.**
4. **Cainhoy District.**
5. **Neighborhood District.**

IV. Design Guidelines

This Section contains the Design Guidelines for the development of Small Wireless Facilities in the ROW. The specific design guidelines applicable to a proposed Small Wireless Facility are determined by the District designation in which the Small Wireless Facility is proposed to be located. Section V explains which of the general guidelines contained in this Section apply to each District.

A. General Guidelines

No portion of a Small Wireless Facility shall interfere with lighting, pedestrian or vehicular clearances, or sight lines for traffic signs, signals, or intersection sight distance. Designs shall also conform with any conditions

contained in any Master Wireless Use License Agreements and Wireless Site License Agreements. The following guidelines are applicable to the specific components of a Small Wireless Facility:

1. Antenna

a) *Pole top Cannister*

Preferred antennas shall be cannister type mounted to the top of pole, shrouding shall be used to conceal cable connections and transition to the pole creating a uniform look. Pole top cannisters shall not exceed three (3) cubic feet in volume.

b) *Panel*

Not Preferred but, where necessary, panel antennas may be approved. Panel antennas shall be either cylindrical in shape or shrouded in a common cylinder or three-sided banner to conceal connections and cabling. Panel antennas shall be mounted as close to the Pole or Tower as possible to minimize visual impact. Panel Antennas shall not exceed three (3) cubic feet in volume.

c) *Microwave antennas*

Shall be concealed and not exceed the overall dimensions of Pole top Cannisters

d) *Omni directional "Whip" Antenna*

Omni Antennas shall not exceed three (3) cubic feet in volume.

2. Radio/Network Interface Equipment ("Radio")

All radio and network interface equipment shall be concealed in the Pole, on the Pole where allowed as set forth in these Guidelines, or underground in a vault. The City will work with the Wireless Service Provider to accommodate their choice to the extent possible. Radio equipment may be mounted in ground mounted cabinets outside of the ROW such that the cabinets do not interfere with the existing pedestrian paths, traffic sight lines, or other clearance requirements for vehicle or pedestrian traffic, or where the ROW lacks formal existing or planned pedestrian walkways as determined by the City.

3. Cabling

Cabling shall be neatly trained and concealed in conduit, duct, shrouded, or within the structure of the Pole. Connections at the antenna and radio equipment shall be concealed within the Pole and/or by shrouding. Figure 2 shows unacceptable cabling practice.

4. Appurtenances

a) *Electric meter*

Where electricity is not provided by the existing infrastructure or where metered, meters shall either be single pole mount unit, mounted within the Pole, or a pedestal located off the ROW on private property subject to Planning. Electric meters and disconnects shall be allowed provided they comply with local and state electric codes, and shall not interfere with pedestrian or vehicular clearances or sight lines for traffic signs, signals, or intersection sight distance.

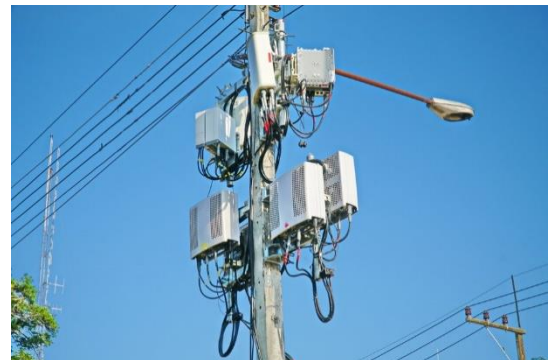


Figure 1 Example of unacceptable cabling and shrouding

b) Fiber, Cable, or Network Interface Equipment

Fiber or cable to the Radio shall be over existing overhead routes or underground. Demarcation points between the provider of services and the user of the service for fiber or cable services (“Demarcation Facility”) shall either be in a vault or a pedestal. Alternatively, if the Radio equipment is allowed to be mounted on a Pole, the Demarcation Facility may be included in the shrouding or within the pole. Pedestals shall not interfere with pedestrian or vehicular clearances or sight lines for traffic signs, signals, or intersection sight distance.

5. Shrouding or Stealth

Antenna, radio equipment, cabling and connections shall be shrouded and or concealed to minimize visual impact from the sidewalk and roadway and adjacent structures. The equipment or antenna may be considered shrouded if the design meets aesthetic requirements and cabling is neatly trained and shrouded. Maximum shrouding for equipment shall be no more than twenty-eight (28) cubic feet.

The Shrouding and equipment shall not interfere with pedestrian or vehicular clearances or sight lines for traffic signs, signals, or intersection sight distance. Shrouding at the option of the City, and with agreement of the Wireless Service or Infrastructure Provider, may include either banner or street signage.

6. New or Replacement Poles

A Replacement Pole shall look substantially like existing Poles including exact replacement of lighting fixture. Replacement Poles shall be painted to match if painted or be made of the same material as the original Pole. In the case of concrete or exposed granite finishes a faux finish may be used with either paint or a photorealistic wrap, subject to review and approval of the City.

Replacement Poles in a District with contiguous zones shall all match and be of the same height, material, dimensions and manufacture to the extent possible as determined by the City.

New Poles shall be of similar architectural features and color as existing Poles in the vicinity as determined by the City.

7. Identification Markers

A 4-inch by 6-inch (maximum) plate or sticker with the Wireless Service or Infrastructure Provider’s name, location identifying information, and emergency telephone number shall be permanently fixed to the base of the Pole or the bottom of the attached shrouding. Other attachment locations may be used so long as the Identification Marker is visible and readable from street level.

B. Pole/Attachment Guidelines

1. Collocation

To prevent overloading of Poles, overcrowding of the ROW, and excessive attachments to a limited number of Poles in the ROW, no more than one Wireless Service Provider’s Small Cell Wireless Facility is allowed per Pole if there are other unoccupied Poles that can accommodate a Small Wireless Facility within a 300-foot radius from the proposed installation. Where Wireless Service Providers share an antenna(s) and common shrouding or stealthing, as may be the case with Wireless Infrastructure providers, collocation shall be allowed in all Districts. In cases where an unoccupied structure Pole does not exist within a 300-foot radius, a new Type 3 Structure maybe installed unless otherwise provided in Section V. The new Type 3 structure shall be designed to accommodate at least two Wireless Service Providers’ Radios and either two antenna bays or by using a shared antenna. Nothing in this section shall prohibit a Wireless Service Provider or Wireless Infrastructure Provider

from operating, occupying, broadcasting from or otherwise using a Small Wireless Facility or any other Wireless Facility from areas other than the ROW.

2. ROW Separation Requirements

A Wireless Service Provider or Wireless Infrastructure Provider shall not operate, occupy, broadcast from, or otherwise use a Small Wireless Facility in the ROW located within a 300-foot radius of another Small Wireless Facility that said Wireless Service Providers or Wireless Infrastructure Provider is operating, occupying, broadcasting from, or otherwise using. Table 1 provides the required distances between installations for various Districts categories in the ROW. Nothing in this section shall prohibit a Wireless Service Provider or Wireless Infrastructure Provider from operating, occupying, broadcasting from or otherwise using a Small Wireless Facility or any other Wireless Facility from areas other than the ROW. If a Wireless Services or Infrastructure Provider desires to locate closer than 300 feet, then sufficient evidence shall be provided to the City to show there are sufficient structures available for competitors, and that the coverage is necessary showing capacity and coverage details and or metrics.

3. Type 1: Attachment to an Existing Pole in the Right-of-Way

To the extent allowed by the owner of the Pole, If any existing Pole that Small Wireless Facility equipment is proposed upon requires replacement the applicant shall be required to replace said Pole with a Type 2 installation.

a) Utility Wood Pole Strand Mounted

Aerial fiber and power strand installations are allowed; however, coiling of excess fiber or other cables is not allowed. All lines shall be neatly trained and secured. See Figure 2 for a schematic example.

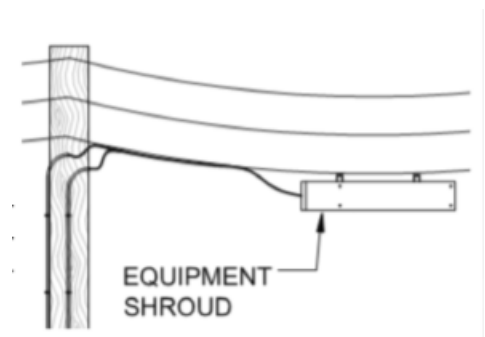


Figure 2 Schematic of Strand Mounted equipment

b) Wood Pole With or Without Lighting Mast(s)

All Small Wireless Facility equipment shall be mounted behind a shroud. No more than two shrouds may be installed at each location. No Small Wireless Facility devices shall be installed without confirming that the intended installation has no impact on the streetlight's operational performance.

The lighting design shall meet the luminaire specifications and design requirements set forth in the City’s Street Lighting Design Guidelines. These guidelines provide information about luminaire aesthetics, lighting criteria, typical streetlight spacing, specifications and details. The Wireless Service or Infrastructure Provider shall provide all documentation required by the Street Lighting Design Guidelines to City during the permitting process. See Figure 3 for a schematic example.

c) Decorative Pole With Luminaire

All Small Wireless Facility equipment shall be mounted behind a shroud. No more than two shrouds shall be installed at each location. No Small Wireless Facility devices shall be installed without confirming that the intended installation has no impact on the operational performance of a streetlight.

The lighting design shall meet the luminaire specifications and design requirements set forth in the City’s Street Lighting Design Guidelines. These guidelines provide information about luminaire aesthetics, lighting criteria, typical streetlight spacing, specifications and details. The network provider shall provide all documentation required by the Street Lighting Design Guidelines to the City during the permitting process.

d) Traffic Pole With or Without Luminaire

All Small Wireless Facility equipment shall be mounted behind a shroud. No more than two shrouds shall be installed at each location. No Small Wireless

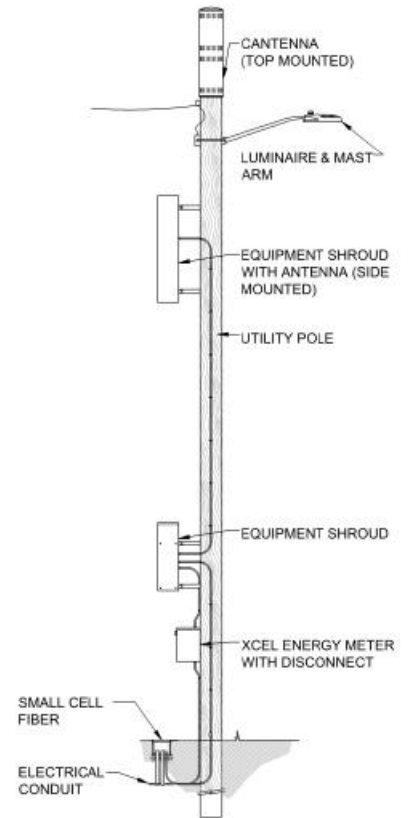


Figure 3 Schematic of Small Cell on Wood Pole with Luminaire

Facility devices shall be installed without confirming that the intended installation has no impact on the streetlight’s operational or electrical performance.

The lighting design shall meet the luminaire specifications and design requirements set forth in the City’s Street Lighting Design Guidelines. These guidelines provide information about luminaire aesthetics, lighting criteria, typical streetlight spacing, specifications and details. The network provider shall provide all documentation required by the Street Lighting Design Guidelines to City during the permitting process.

4. Type 2: Integrated Right-of-Way Poles

To the extent allowed by the owner of the pole, In cases where the District or other criteria dictate replacement of an existing Pole to accommodate a Small Wireless Facility, the equipment cabinet, upper pole, luminaire, mast arm, luminaire control node if applicable, antenna enclosure, and all hardware and electrical equipment necessary for a complete assembly shall be integrated into a single Pole. Mast Arm and Luminaire must be same make and model as unit(s) being replaced to the extent possible as determined at the City’s discretion. Pole shall be of similar architectural features (ie Square, round, fluted) as the original Decorative Pole.

a) *Integrated Design with Luminaire*

A Type 2 Integrated ROW Pole should only be located where an existing Pole can be removed and replaced, or at a new location where it has been identified that a streetlight is necessary. See Figure 4 for a schematic Example. Type 2 Poles replacing poles owned by the City shall be owned by the City and maintained by the Wireless Service Provider during the term of occupancy excepting maintenance and replacement of the luminaire. In cases where an integrated pole with luminaire is damaged, knocked down, or otherwise rendered ineffective as a street light, the Owner shall have the right to immediately replace the luminaire with a temporary light until such time as the Small Wireless Facility is replaced.

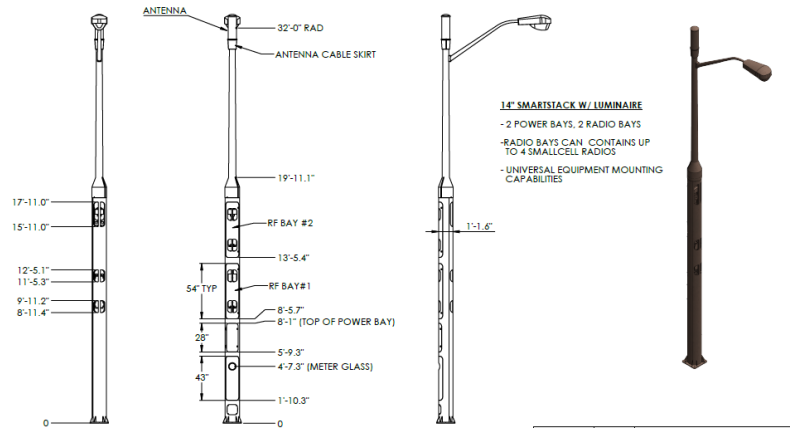


Figure 4 Schematic of Integrated Lighting Pole Design

When submitting to City, the Pole design and configuration shall be per City Standards. In no case shall these Poles exceed 15” in diameter, unless in the discretion of the City, the proposed dimensions materially conform to the intent of these Design Guidelines.

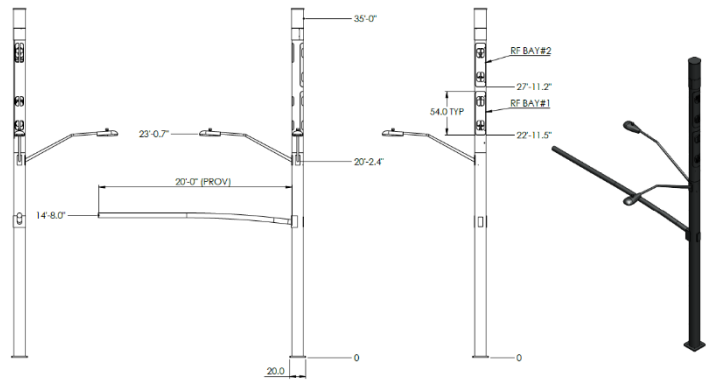


Figure 5 Schematic of Integrated Traffic Pole

b) *Integrated Traffic Pole with or without Luminaire*

In cases where the existing structural integrity or other conditions prevent a Type 1 attachment to a traffic standard, an Integrated Pole must be used. In no case shall these Poles exceed 20 inches in diameter unless the existing Pole being replaced has a greater diameter. Reinforcement of an existing Pole is not permitted. See Figure 5 for a schematic example.

5. *Type 3: New Freestanding Single Purpose Towers*

New Towers are strongly discouraged, and will only be considered in cases where there are no existing unoccupied poles within 300 feet radially of the proposed location. New Towers shall match or exceed the aesthetics of existing streetlights installed within 1000 feet to the proposed Tower. The Wireless Service OR Infrastructure Provider shall perform a visual inspection (Online street images are considered sufficient unless the pole standards were updated after the images were published) prior to submitting a permitting application to determine existing aesthetics.

a) *New Tower*

New Towers are strongly discouraged where existing Poles exist.

New Towers shall be fully integrated to include the equipment cabinet, upper pole, antenna enclosure, and all hardware and electrical equipment necessary for a complete assembly shall be integrated into a single structure. Tower shall be of similar architectural features (i.e. square, round, fluted) as the nearest Decorative Pole in the vicinity or as determined by the City.

b) New Wood Tower

New Wood Towers are discouraged over an integrated Pole or Tower. Wood may only be used in specific Districts where no other structure is available within a 300 feet radius of the Wireless Service Provider’s proposed location and the nearest Poles are made of wood.

All Small Wireless Facility equipment shall be mounted behind a shroud. Only two shrouds, including the disconnect and antenna, shall be installed at each location. No ground mounted equipment, including backup power supply, shall be allowed except in District Categories where it is allowed.

V. Design Guidelines Applied to Districts

A summary of the Design Guidelines applied to Districts is in Table 1.

Districts	Guidelines			
		Separation	Type of Structure Allowed	Height Limit
	Peninsula	300 ft	1,2	5 ft above existing; Never exceed 40 ft
DRB Corridors	300 ft	1,2	5 ft above existing; Never exceed 40 ft	
Parks	300 ft	1,2	5 ft above existing; Never exceed 40 ft	
Residential	300 ft	1,2	5 ft above existing; Never exceed 40 ft	
Commercial	300 ft	1,2,3	5 ft above existing; Never exceed 40 ft	
Industrial	300 ft	1,2,3	5 ft above existing; Never exceed 40 ft	
Special	300 ft	1,2	5 ft above existing; Never exceed 40 ft	

Table 1 Design guidelines summary

A. Peninsula

1. Pole Type Allowed

Type 1 installations may be allowed on existing wood poles subject to i) Antennas being shrouded or sufficiently concealed, ii) no more than one shrouded equipment and radio enclosure per pole, iii) subject to pole owner installation and/or design guidelines, and iv) equipment shall not impinge on view from windows or view from adjacent buildings within 10 feet of the installation. Type 2 integrated Poles are preferred in the Peninsula. All integrated Poles shall match existing fixtures being replaced to the extent possible as determined by the City. Regardless of equipment location, where possible, the integrated Poles in a contiguous area of similar structures shall all be identical height, material, and manufacture.

2. Height Limit:

Integrated Poles replacing City owned lighting fixtures shall not exceed 5 feet above the existing height of the Pole being replaced. Luminaires, if any, shall be mounted at the same height above ground as others within 500 feet in the District and, where possible, shall be of the same make and model using the same lamps as those existing in the District. If multiple types of luminaires or Poles exist, the City will determine which design shall be used. No small wireless shall exceed 40 feet in height.

B. DRB Corridors

Type 1 installations may be allowed on existing wood poles subject to i) Antennas being shrouded or sufficiently concealed, ii) no more than one shrouded equipment and radio enclosure per pole, iii) subject to pole owner installation and/or design guidelines, and iv) equipment shall not impinge on view from windows or view from adjacent buildings within 10 feet of the installation. Type 2 integrated Poles are preferred in the DRB Corridors. All integrated Poles shall match existing fixtures being replaced to the extent possible as determined by the City. Regardless of equipment location, where possible, the integrated Poles in a contiguous area of similar structures shall all be identical height, material, and manufacture.

1. Height Limit

Integrated Poles shall not exceed 5 feet above the existing height of the Pole being replaced. Luminaires, if any, shall be mounted at the same height above ground as others within 500 feet in the District and shall be of the same make and model using the same lamps as those existing in the District. No small wireless facility shall exceed 40 feet in height.

C. Parks

Type 1 installations may be allowed on existing wood poles subject to i) Antennas being shrouded or sufficiently concealed, ii) no more than one shrouded equipment and radio enclosure per pole, iii) subject to pole owner installation and/or design guidelines, and iv) equipment shall not impinge on view from windows or view from adjacent buildings within 10 feet of the installation. Type 2 integrated Poles are preferred in Parks. All integrated Poles shall match existing fixtures being replaced to the extent possible as determined by the City. Regardless of equipment location, where possible, the integrated Poles in a contiguous area of similar structures shall all be identical height, material, and manufacture.

1. Height Limit

Integrated Poles shall not exceed above the existing height of the Pole being replaced. Luminaires, if any, shall be mounted at the same height above ground as others within 500 feet in the District and to the extent possible as determined by the City, and shall be of the same make and model using the same lamps as those existing in the District. No small wireless facility shall exceed 40 feet in height.

D. Residential

Type 2 integrated poles are required in residential areas subject to the exception below. All Integrated Poles shall match the first installation under these guidelines in a given District of contiguous zone or zones. Regardless of equipment location, the integrated Poles in contiguous Residential District. Poles shall all be of identical height, material and manufacture to the extent possible as determined by the City. Type 1 installations may be allowed on existing wood poles subject to i) Antennas being shrouded or sufficiently concealed, ii) no more than one shrouded equipment and radio enclosure per pole, iii) subject to pole owner installation and/or

design guidelines, and iv) equipment shall not impinge on view from windows or view from adjacent buildings within 10 feet of the installation.

1. Height Limit

Integrated Poles shall not exceed 5 feet in height over the Pole being replaced. Luminaires, if any, shall be mounted at the same height above ground as others within 500 feet in the District and shall, where possible, be of the same make and model using the same luminaires as existing in the District. No small wireless facility shall exceed 40 feet in height.

E. Commercial District

Type 2 integrated structures are preferred; however, Type 1 structures are allowed. When there are no vertical structures within 750 feet of a given location Type 3 Towers are allowed. Type 1 installations may be allowed on existing wood poles subject to i) Antennas being shrouded or sufficiently concealed, ii) no more than one shrouded equipment and radio enclosure per pole, iii) pole owner installation or Design Guidelines, and iv) equipment not impinge on view from windows or view from adjacent buildings within 10 feet of the installation.

1. Height Limit

For Type 1 and 2 Poles maximum height shall not exceed 5 feet over adjacent Poles in the ROW that are similar to the Pole being used or replaced. In the case of type 3 Towers, height shall be limited by the most restrictive District adjacent to the subject location. No small wireless facility shall exceed 50 feet in height.

F. Industrial District.

1. Pole or Tower Type Allowed

Type 2 integrated Poles are preferred; however, Type 1 Poles are allowed. When there are no poles within 300 feet of a given location, Type 3 Towers are allowed.

2. Height Limit:

For type 1 and 2 Poles maximum height shall not exceed 5 feet over adjacent existing Poles in the ROW that are similar to the Pole being used or replaced. In the case of type 3 Towers, height shall be limited by the most restrictive height adjacent to the subject location. No small wireless facility shall exceed 50 feet in height.

G. Special District.

1. Pole Type Allowed

Only Type 2 integrated Poles are allowed in Special Districts. All integrated Poles shall match the first installation under these guidelines in a given District of contiguous zone or zones. Regardless of equipment location, the integrated Poles in a contiguous residential District shall all be of identical height, material, and manufacture. Type 1 installations may be allowed on existing wood poles subject to i) Antennas being shrouded or sufficiently concealed, ii) no more than one shrouded equipment and radio enclosure per pole, iii) pole owner installation or Design Guidelines, and iv) equipment not impinge on view from windows or view from adjacent buildings within 10 feet of the installation.

2. Height Limit:

Integrated Poles shall not exceed 5 feet in height over the replaced Pole. Luminaires, if any, shall be mounted at the same height above ground as others proximate in the District and shall be, to the extent possible as

determined by the City, of the same make and model using the same lamps as the existing in the District. No small wireless facility shall exceed 40 feet in height.

VI. Application Requirements

- A. Public Works Small Wireless Facility Application form
- B. Scaled drawings showing the proposed installation and existing installation
- C. Structural Calculations
- D. Photo simulation showing the Existing site and Proposed installation unless that installation has been previously approved in the subject District
- E. A Maximum Permissible RF Exposure Report

The Maximum Permissible RF Exposure report shall be endorsed by a licensed radio frequency engineer or an electric engineer in the State where the Small Wireless Facility is located. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the strand or Small Wireless Facility by ladder, climbing or bucket truck. The Report may be generic for a common installation type that matches the proposed site type depicted in the application.

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(G)

Wireless communications facility.

(1)

General requirements. All **wireless** communications facilities shall comply with the following general requirements in addition to other applicable provisions of this subsection 19-4.3.2(G):

(a)

Abandonment and removal. A **wireless** communications facility or tower that has not been operated for a period in excess of 12 consecutive months is abandoned and must be removed; provided the city must first provide written notice to the owner(s) in order to allow the owner(s) ten business days to rebut the assertion of abandonment. Any supporting structure other than a tower, and any property affected by placement of the **wireless** communications facility or modification of supporting structure must be restored to its condition prior to attachment of the **wireless** communications facility, except as the city may otherwise direct. The city shall enforce removal by means of existing regulatory authority, with costs of removal or restoration jointly chargeable to the owner of the **wireless** communications facility or the supporting structure.

(b)

Multiple uses on a single parcel or lot. **Wireless** communications facilities may be located on a parcel containing another principal use on the same site or may be the principal use itself.

(c)

Required buffer yards. **Wireless** communications facilities shall not be located within street buffer yards that are required by subsection 19-6.2.4, Street buffer yards, with the exception of approved stealth **wireless** communications facilities.

(d)

Right-of-way. No **wireless** communications facility may be installed in the public right-of-way of the city unless:

(i)

The applicant holds a valid franchise or other written consent from the city or is otherwise authorized by South Carolina law to occupy the right-of-way;

(ii)

Each **wireless** communications facility location is permitted through an individual node site license or otherwise approved pursuant to this chapter; and

(iii)

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The other applicable provisions of this section 19-4.3.2(G) are satisfied along with all ordinances and regulations governing public rights-of-way management.

(e)

Lighting and signage.

(i)

Lighting. **Wireless** communications facilities shall not be lighted unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

(ii)

Signage. Except for signage that may be approved as a concealment element, signs located at or upon **wireless** communications facilities or installed by or on behalf of the entity that owns or uses the **wireless** communications facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(f)

Site usage.

(i)

Any buildings, cabinets or shelters associated with the **wireless** communications facility, shall be used only to house equipment and other supplies in support of the operation of the **wireless** communications facility. Any equipment not used in direct support of such operation shall not be stored on the site.

(ii)

Where stealth facilities are not feasible, base station and accessory equipment shall be located, designed, and/or screened to blend with the existing natural, or built surroundings to reduce the visual impacts as much as technically feasible, and to be compatible with neighboring land uses and the character of the community.

(iii)

Except as part of a stealth facility, no ground mounted base station or accessory equipment is permitted in a residential zone with the exception of such cabinets which do not exceed the dimensions of other utility-associated cabinets within the immediate residential vicinity, and which are shielded or placed in a manner consistent with such other cabinets.

(iv)

The **wireless** communications facility shall not produce noise that would interfere with the peaceable enjoyment of adjoining properties.

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(v)

The equipment installed as part of any **wireless** communications facility shall be minimized, so that the **wireless** communications facility is as unobtrusive as technically feasible.

(vi)

The elements of the **wireless** communications facility, and any support structure to which it is affixed must be consistent with the overall design and character of the neighborhood and locations in which it is placed, and with publically-available planned improvements to those neighborhoods. For facilities in the rights-of-way, the **wireless** communications facility, and any support structure to which it is to be affixed, must be consistent with the corridor in which it is placed, and publically-available planned corridor improvements.

(g)

Exceptions.

(i)

Notwithstanding any other provision of the City Code, an applicant may obtain approval of an application for placement of a **wireless** communications facility if applicant demonstrates that denial of the application would constitute an effective prohibition within the meaning of 47 U.S.C. Section 332(c)(7) or otherwise violates applicable law such that the city is required to issue a permit for placement. Claims must be supported by sworn declarations, and engineering claims by licensed engineers authorized to practice in the State of South Carolina and qualified to attest to facts asserted.

(ii)

Approval is not required under this section 19.4.3.2(G) for placement of **cells** on wheels for a temporary period as defined under FCC regulations; for placement on a portion of strand between two utility poles of **wireless** communications facilities that do not cumulatively exceed one cubic foot in volume; or for ordinary maintenance or replacement of equipment which does not increase the physical dimensions of a **wireless** communications facility or supporting structure, or defeat any applicable concealment element. Other modifications of a **wireless** communications facility, or of a support structure to accommodate a modification to a **wireless** communications facility, do require approval; provided, however, the city engineer, with the approval of the administrator, may exempt from approval immaterial increases in the physical dimensions of a **wireless** communications facility or supporting structure, provided the applicable concealment elements are not defeated.

(h)

Projects. When an application for a **wireless** communications facility is part of a network of planned facilities, an applicant may submit, or may be required by the city to submit, plans for the proposed network as a whole, and the city may evaluate the planned facilities considering the impact of the project as a whole, in order to ensure that the impact of the project is minimized.

(i)

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Other obligations. The application for, and the placement of wireless communications facilities shall be subject to this chapter and regulations issued to implement this chapter. This section 19-4.3.2 shall not be interpreted to waive any obligations that may apply under other provisions of applicable law, including but not limited to building and electrical codes, noise codes, and codes governing use of the rights-of-way.

(j)

Design guidelines—generally. In order to provide guidance to applicants concerning the design of wireless communications facilities which comply with this chapter, the city engineer shall maintain and publish on the city's website a catalogue of site-specific designs that have been approved by the city, it being recognized that the same design as those set forth in in the catalogue should in most instances be deemed appropriate for a comparable location. A person who wishes to install a wireless communications facility may ask the city to review the design for installation in particular locations, and to add the design to the catalogue.

(2)

Towers, monopoles and colocation.

(a)

Types permitted. New towers must be either monopoles, or stealth facilities, and stealth facilities are preferred.

(b)

Availability of other suitable locations. New monopoles other than stealth facilities shall not be permitted unless the applicant makes the showing required by section 19-4.3.2(G)(1)(g)(i). Except in residential zoning districts, stealth facilities may be permitted if applicant demonstrates that no existing tower would permit the provision of personal wireless services to the area which the applicant proposes to serve, while satisfying the other provisions of this section 19-4.3.2(G).

(c)

Design. Towers shall be subject to the following:

(i)

Except where inconsistent with other provisions of the City Code, towers shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:

(1)

Towers 60 to 100 feet shall support at least two communications providers;

(2)

Towers greater than 100 feet but less than 150 feet shall support at least three communications providers; and

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(3)

Towers greater than 150 feet in height shall support at least four communications carriers.

(ii)

Except where inconsistent with other provisions of this Code, the equipment compound area surrounding the tower must be of sufficient size to accommodate base station and accessory equipment for the appropriate number of communications providers in accordance with subsection 19-4.3.2(G)(2)(c)(i).

(iii)

Towers shall be subject to terms and conditions that minimize the impact upon private and public property (including, where applicable, the public right-of-way), ensure consistency with the surrounding area, and employ concealment elements appropriate to the location proposed.

(iv)

Towers are not permitted within the public right-of-way or in utility easements, except in accordance with the following requirements:

(1)

The easement area or public rights-of-way shall be a minimum of 100 feet in width;

(2)

The easement area or public rights-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height;

(3)

The height of a tower or the highest point on the base station affixed to it may not exceed by more than 30 feet the height of existing utility support structures; and

(4)

The tower and all other elements of the **wireless** communications facility associated with it, shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.

(d)

Setbacks. Unless otherwise stated herein, towers shall be set back from all property lines a distance equal to its engineered fall zone.

(i)

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Residential uses. Where allowed in residential districts, towers shall be located at least 30 feet from the property line of a lot containing a residential use and, further, setback from any structure located thereon at a distance equal to its engineered fall zone.

(e)

Height. When allowed in residential districts, the highest point on the tower or base station affixed to it shall not exceed a height equal to 60 feet from ground level.

(f)

Fencing. Except for towers in the rights-of-way, or where the requirement would defeat concealment elements, a tower and all other elements of the **wireless** communications facility associated with it shall be secured and enclosed with a fence not less than six (6) feet in height. Fencing shall be screened in accordance with subsection 19-6.2.5. Barbwire is prohibited.

(3)

Roof-mounted communication towers and base stations.

(a)

Location. Except in the C-4 district, a proposed roof-mounted communication tower or base station may be permitted as an accessory or secondary use only on buildings that exceed 50 feet in height in accordance with subsection 19-5.2.9, Building height.

(b)

Height. In the C-4 district, a roof-mounted communication tower or base station shall not exceed a height to which it is visible from the adjacent public rights-of-way. For all other districts except S-1 and I-1, such roof-mounted facilities shall not exceed the height of 40 feet, and the height may be further limited as appropriate to issuance of the conditional use permit in light of the proposed location.

(c)

Equipment. All elements of the **wireless** communications facility shall be of a color that will minimize their visual impact unless concealed by a parapet, located on the rear elevation, or configured to have a minimal visual impact as seen from the street or existing residential development.

(4)

*Building, utility pole and light pole mounted **wireless** communications facilities.*

(a)

Stealth facilities permitted. Base stations that are stealth facilities may be placed inside any existing building or other existing structures (other than off-premises signs) provided that the placement does not alter the physical dimensions of the structure. Portions of base stations that are stealth facilities may be attached to the side of any building or other existing structures, other

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than a single-family residential units and off-premises signs. However, installation is not permitted where it would adversely affect a historically significant or environmentally sensitive structure or area, and is only permitted where other elements of the **wireless** communications facility can be appropriately concealed by placing those elements on the rooftop, within the building, underground, or by some other means that conceals them from view. Antennas must be located at least 20 feet above ground level, and may not extend into any rights-of-way except as part of approved signage.

(b)

Placement on existing utility poles.

(i)

Antennas associated with a **wireless** communications facility may be placed on an existing utility pole, colored to match or complement the color of the utility pole, and mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Except where the utility prohibits it, the antenna should be placed in a shroud at the top of the pole, with the shroud of the same circumference as the utility pole at the point of attachment. Except for such designs as may be included in the design catalogue, pole-top antennas (including connectors) should not extend more than six feet above the existing utility pole. Where the antenna cannot be placed at the top of the pole, it may be placed in the communications space on a cross-arm parallel to and consistent with the placement of cross-arms on utility poles in the same corridor and with antennas and cross-arms sized and mounted to minimize their obtrusiveness. The volume of the antennas on any utility pole should not exceed three cubic feet in size.

(ii)

Accessory equipment may not be attached to the pole, or ground-mounted absent a showing that the equipment is required, and no other placement is feasible, or less intrusive.

(iii)

Other base station and permitted, pole-mounted accessory equipment shall be mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Equipment should be flush-mounted to the pole, with all cabling neat and concealed. In no event shall any portion of the **wireless** communications facility be ground-mounted without the city's express approval, which approval may be conditioned on placing concealing the facilities in a manner appropriate to the location. Unless base station equipment is within the utility pole, in order to utilize concealment elements, the equipment must be designed so that it is not readily apparent from all angles of view, so that it is mounted at a height such that it is out of pedestrian sight lines, and so that the impact on adjoining properties is minimized.

(iv)

Neither the **wireless** communications facility, or the support structure shall interfere with pedestrian or vehicular movement or storage.

(c)

Mounted on light poles.

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(i)

This section applies to light poles situated on private property that are not owned or controlled by the city. Other light poles require a license from the city, which license will specify the design permitted for particular light poles.

(ii)

Wireless communications facilities may be placed on existing light poles subject to the same conditions that apply to existing utility poles provided that:

(1)

The design and placement of all elements of the **wireless** communications facility is consistent with the design of the light pole to which it will be attached and;

(2)

The design and placement of all elements of the **wireless** communications facility will not adversely affect the overall design of the area within which the Light Pole is located.

(3)

The city must know who will own and control the light pole, and who is responsible for emergency responses and ensuring the safety of the light pole.

(d)

Replacement. For purposes of this section, if an existing utility or light pole must be replaced it may be replaced provided that it meets other applicable requirements of this section and:

(i)

In the case of the utility pole, the overall height of the pole, measured from ground level to the highest point on the **wireless** communications facility, does not increase by more than six feet, and the diameter measured at six feet from the butt, does not increase by more than two inches; and

(ii)

In the case of the light pole, its overall height, measured from ground level to the highest point on the **wireless** communications facility, does not increase by more than six feet, and the design, height and proportions remain consistent with design of the light pole that is being replaced.

(5)

Special rules for placement within the public rights-of-way. In addition to the above requirements, the following rules apply to **wireless** communications facilities located within the public rights-of-way.

(a)

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Applications for placement of **wireless** communications facilities must be submitted to the division of public works, to the attention of the city engineer and such applications may be decided administratively. If the city engineer determines that the installation complies with the requirements of any required franchise, and this ordinance, and has been appropriately designed for the existing and publically-available planned design of the corridor in which it is placed; or where applicant shows that denial would result in an effective prohibition within the meaning of 47 U.S.C. § 332(c)(7), or otherwise violates applicable law such that the City is required to issue a permit for placement, the application may be preliminarily approved, subject to appeal, and otherwise preliminarily denied or approved subject to conditions. Preliminary decisions become final unless appealed to the zoning board of appeals.

(b)

Preliminary decisions adverse to the applicant may be appealed to the zoning board of appeals within five business days of a preliminary decision, and in any case where there is a claim that denial will result in an effective prohibition within the meaning of 47 U.S.C. § 332(c)(7), or otherwise violates applicable law such that the City is required to issue a permit for placement, the zoning board of appeals shall hear and determine the matter, applying standards and following procedures that would be followed in issuing a special exception.

(c)

Approval shall be by way of an individual, site-specific node site license jointly issued by the administrator and the city engineer (or their designees). Denials shall be in writing, based upon substantial evidence in a written record.

(d)

With respect to any location within the central business district or a preservation overlay district with residential character, **wireless** communications facilities shall be of a design approved by the design review board.

(e)

Wireless communications facilities shall not be located above-ground in any location where the lines of the incumbent local exchange carrier are underground, unless co-located on an existing structure or an existing structure is removed and replaced with a new structure which is substantially similar in size and appearance to the structure that is being replaced.

(f)

Placement of **wireless** communications facilities in the public rights-of-way shall not result in an increase in the number of support structures located in the public rights-of-way as of the date of enactment of this ordinance with the exception of those towers permitted under section 19-4.3.2(G)(2) or new utility poles. Provided, in the case of the latter, there must be existing utility poles in the same right-of-way in the immediate vicinity and the applicant must demonstrate that co-location upon said existing utility poles is not feasible or would require a modification such that an additional utility pole would be less intrusive or safer. If an additional utility pole is permitted under this provision, it shall be similar in size and design to existing poles in the same right-of-way and in the immediate vicinity, and spaced appropriately to minimize intrusiveness and to avoid creating undue hazard to persons or property; and

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(g)

Where above ground facilities are permitted under this section 19-4.3.2(G)(4)(e) and/or (f) and the above-ground facilities of the incumbent local exchange carrier are subsequently placed underground, all **wireless** communications facilities in the same right-of-way, in the same area shall be placed underground at the sole expense of the owner.

(h)

Placement of **wireless** communications facilities or support structures for **wireless** communications facilities, or any modification thereto, is not permitted where the city engineer determines that, due to insufficient capacity, safety, reliability, or engineering concerns, existing infrastructure is not adequate to support the same; or the placements or modifications will unduly interfere with other uses of the rights-of-way, or require construction that will be unduly disruptive.

(6)

Application and procedure. The administrator, in consultation with the city engineer and planning and development division shall develop forms requiring such information and documentation as they deem prudent and necessary for the city's review of eligible facilities requests and with respect to all other applications, the issuance of the approvals contemplated hereunder. The administrator, in consultation with the city engineer and planning and development division may develop regulations governing the number of applications that may be submitted by or on behalf of any person at any time, and may require a person, to identify all facilities that it intends to construct within the city, and (in the case of a person who will be leasing facilities to another) all facilities its lessees intend to install within the city. All applications shall be processed in accordance with the following time frames:

(a)

Upon receipt of the application, the administrator or his/her designee shall review such application to determine whether the application is complete, shall notify the applicant that the application is incomplete within 30 days of receipt or such shorter period as may be required in order to toll or reset the time for review under applicable FCC regulations. An application is incomplete if it omits or withholds any required information, or fails to provide information in sufficient detail to determine whether the application is eligible for administrative review, or to determine whether the work will be performed in accordance with, and will result in a **wireless** communications facility that complies with applicable law. If the applicant fails to respond to the notice of incompleteness within a time specified by the administrator, the application shall be denied. If applicant responds, but the application remains incomplete, the administrator shall promptly notify the applicant that the application remains incomplete, within the times specified by applicable law.

(b)

Final action approving or denying an application shall be taken within the following periods, unless applicant agrees to a different schedule, or applicable law requires a different schedule:

(i)

In the case of an application to place a **small wireless** facility (as that term is defined by FCC regulations) using an existing structure, sixty (60) days from receipt of the application, provided

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that the time period may be reset upon initial notification of an incomplete application, and restart upon resubmission, subject to further tolling if the application remains incomplete;

(ii)

Review of an application to place a **small wireless** facility (as that term is defined by FCC regulations), using a new structure, ninety (90) days from receipt of the application, provided that the time period may be reset upon initial notification of an incomplete application, and restart upon resubmission, subject to further tolling if the application remains incomplete;

(iii)

Except for applications for **small wireless** facilities (as that term is defined by FCC regulations) in the case of an application that does not involve modification of, or collocation upon an existing **wireless** communications facility, 150 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;

(iv)

If the application is an eligible facilities request, the administrator 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 so long as Federal law, 47 U.S.C. § 1455, and implementing Federal Communications Commission regulations, 47 C.F.R. §1.40001 regulations require approval of an eligible facilities request as defined herein. By approval, the city solely intends to comply with a requirement of Federal law and not to grant any property rights or interests except as compelled by Federal law;

(v)

In the case of any other application, 90 days, from 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.

(7)

Miscellaneous.

(a)

Severability. Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

(b)

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Conflict with other Laws. Whenever the regulations of this ordinance conflict with the requirements of another South Carolina or Federal Statute or the City Code of Ordinances, the more restrictive standard shall govern.

(c)

No additional cost to the city. Whenever this ordinance specifies co-location, the replacement of an existing structure, or any other action (besides governmental approvals), all such action shall be taken at the sole expense of the applicant.

(d)

References to other laws. All references to state or federal laws and regulations refers to those laws and regulations as they may be amended from time to time.

TOWN COUNCIL



STAFF REPORT Department of Growth Management

MEETING DATE:	June 9, 2020
PROJECT:	Consideration of Approval of an Ordinance to the Town of Bluffton Code of Ordinances, Chapter 28 – Utilities, Article IV – Small Wireless Facilities in Covered Areas– Public Hearing and Second & Final Reading
PROJECT MANAGER:	Heather Colin, AICP Director of Growth Management

REQUEST: Town Staff requests that Town Council hold a Public Hearing and consider approval of Second and Final Reading of the following Ordinance:

An Ordinance to Approve a Text Amendment to Chapter 28 – Utilities to Adopt Article IV - Small Wireless Facilities in Covered Areas.

BACKGROUND: This ordinance is new in its entirety to establish regulations for wireless “small cell facilities” in public rights-of-way (i.e., covered areas). If adopted, the ordinance will be placed into the Utilities chapter of the Code of Ordinances for the Town of Bluffton.

Small cell facilities are intended to support the next generation of cellular service (5G), which provides greater bandwidth and faster download speeds for the increasing number of devices that require wireless service.

Unlike cell towers that cover a broad area, a small cell facility is an antenna (and its related equipment) that provides cellular coverage for a radius of approximately 1500 feet. Typically, the antenna is attached to a structure within a public right-of-way that is less than 50 feet in height. These types of facilities are mostly located in densely populated places but will expand with the growth of 5G technology.

To deploy these types of facilities quickly and less expensively, the telecommunications industry prefers to use structures within public rights-of-way, such as light poles and traffic light structures. To avoid delays and expenses that occurred when cell towers were first deployed, the telecommunications industry has, to some degree, attempted to pre-empt the degree to which local governments can regulate these facilities.

A Federal Order released by the Federal Communications Commission in September 2018 is intended to remove regulatory barriers that were commonplace with cell towers. This includes a “shot clock” to expedite plan review, capping application costs and limiting aesthetic review of the entire facility.

More than 25 states have adopted legislation, suggested by the telecommunications industry that is even more restrictive than the Federal Order with regards to local

government control. The State of South Carolina is also considering similar legislation. House Bill 4262 was approved by the House in 2019; it is presently under review by a Senate sub-committee.

The proposed ordinance is based on a model ordinance provided by the Municipal Association of South Carolina (MASC), which it crafted with the telecommunications industry to streamline the review and permitting process. The ordinance is intended as a guide to prepare local governments to receive applications.

The proposed ordinance is attached as Attachment 1.

NEXT STEPS: Should Town Council approve the Second and Final Reading of the Ordinance at the June 9, 2020 Town Council Meeting, the Ordinance will take effect on June 10, 2020.

Small Cell Facilitates Procedure	Date	Complete
Step 1. Town Council Workshop	March 17, 2020	✓
Step 2. Town Council – 1st Reading	May 12, 2020	✓
Step 3. Town Council Meeting – Final Reading and Public Hearing	June 9, 2020	✓

ATTACHMENTS:

1. Proposed Small Wireless Facilities in Covered Areas Ordinance
2. Photos of Small Cell Facilities
3. Proposed Motion

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH THE STANDARDS FOR THE PLACEMENT OF SMALL WIRELESS FACILITIES IN COVERED AREAS IN THE TOWN OF BLUFFTON, SOUTH CAROLINA; AND FOR OTHER PURPOSES.

WHEREAS, the Town of Bluffton ("Town") encourages wireless infrastructure investment in a manner that promotes the interests of the public health, safety and welfare; and,

WHEREAS, the Town recognizes that Small Wireless Facilities together with high capacity transport medium such as fiber optic cabling may be effectively deployed in Public Rights-of-Way upon certain terms and conditions; and,

WHEREAS, this Ordinance is intended to grant non-exclusive and conditional municipal consent to use of Rights-of-Way and establish a standard application process for the review of permits for Small Wireless Facilities,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, that The Code of Ordinances for the Town of Bluffton, South Carolina, is hereby amended by adding a new Article IV to Chapter 28 (Utilities) entitled "Small Wireless Facilities in Covered Areas," and which shall read as follows:

Sec. 28-50. - *Definitions.*

The following words or phrases, as used in this Article, shall have the following respective meanings as set forth in this Section unless context dictates otherwise:

"Antenna" means communication equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

"Applicable Codes" means uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in Title 6, Chapter 9 of the South Carolina Code of Laws, local amendments to those codes authorized by state law, and local codes or ordinances which impose requirements defined in Section 5 of this Ordinance including objective design and concealment standards to regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.

"Applicant" means any person who submits an Application to a Town and is a Wireless Services Provider or a Wireless Infrastructure Provider.

"Application" means a request submitted by an Applicant for a permit to (i) Collocate Small Wireless Facilities; or, (ii) construct, install, maintain, operate, replace or modify a Utility Pole or Wireless Support Structure.

"Cable, Communications, Fiber or Electric Easement" means an easement, granted to a cable or video service provider, a communications service provider (including without limitation a telephone utility), a fiber optics cable services provider, or an electric services provider created or authorized by state law to provide such services, that runs within a Rights-of-Way and is occupied by existing Utility Poles or Wireless Support Structures carrying electric distribution lines, wires, cable, conduit, fiber optic cable for telecommunications, cable or electric service or supporting municipal street lights, or security lights. The term Cable, Communications, Fiber or Electric Easement excludes easements for service drops or lines connecting the customer's premises to the cable, communications, fiber or electrical provider.

"Collocate" means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to an existing Wireless Support Structure or Utility Pole located in Covered Areas

within the jurisdiction of the Town. "*Collocation*" has a corresponding meaning.

"*Covered Areas*" means the surface of, and the space above and below, any public "Rights-of-Way," "ROW," "Town Rights-of-Way," "Public Rights-of-Way," and/or "Cable, Communications, Fiber or Electric Easement" as those terms are defined herein.

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

"*Decorative Pole*" means a Utility Pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or a temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal practices.

"*Design District*" means an area that is zoned, or otherwise designated by municipal ordinance, and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis. The following areas are within the Design District: Highway Corridor Overlay District, as defined by the Chapter 23 of the Muni-Code (Unified Development Ordinance).

"*Fee*" means a one-time charge.

"*Historic District*" means an area that is zoned or otherwise designated as a Historic District under municipal, state or federal law and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis. The following areas are within the Historic District: Old Town Bluffton Historic District as defined by the Official Zoning Map of the Town of Bluffton.

"Micro Wireless Facility" means a Small Wireless Facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Town.

"Rate" means a recurring charge.

"Rights-of-Way" or "ROW" or "Town Rights-of-Way" or "Public Rights-of-Way" means that area on, below, or above a public roadway, highway, street, sidewalk, alley dedicated to, managed or controlled by the Town, County or the State of South Carolina, but not including a federal interstate highway, in the Town.

"Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of not more than six (6) cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

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

"Town-Owned Pole" means (i) a Utility Pole owned or operated by the Town in Covered Areas, including a Utility Pole that provides lighting or traffic

control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Town in a Covered Area that supports only Wireless Facilities. The term does not include a Utility Pole owned or operated by and accounted for as an asset of a municipal electric utility.

"Transmission Pole" means a pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

"Underground District" means an area that is designated by ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing above ground structures in a Covered Area and for which the Town maintains and enforces standards on a uniform and nondiscriminatory basis.

"Unified Development Ordinance Administrator" as defined under the Unified Development Ordinance as set forth in Chapter 23 of the Town of Bluffton Code of Ordinances and shall also include his or her designees. Unless the context requires otherwise, anytime administrator action is required, the Unified Development Ordinance Administrator shall have authority.

"Utility Pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control devices, traffic control or directional signage, or a similar function regardless of ownership, including Town-Owned Poles. Such term shall not include structures supporting only Wireless Facilities, nor shall it include Wireless Support Structures.

"Wireless Facility" means equipment at a fixed location that enables Wireless Services between user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power

supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is Collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between Wireless Support Structures or Utility Poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an Antenna.

"Wireless Infrastructure Provider" means any Person including a Person authorized to provide telecommunications service in the State, that builds, installs or maintains Utility Poles, wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures.

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

"Wireless Services Provider" means a Person who provides Wireless Services.

"Wireless Support Structure" means a freestanding structure, such as a monopole or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole.

Section 2. Purpose and Scope.

(a) The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in Covered Areas within the jurisdiction of the Town.

(b) It is the intent of this Ordinance to establish uniform standards including, but not limited to:

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

- (ii) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (iii) Prevention of interference with other facilities and operations of facilities lawfully located in Covered Areas or public property;
- (iv) Preservation of the character of neighborhoods where facilities are installed; and,
- (v) Preservation of the character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places or locally designated Historic Districts.

Section 3. *Permitted Use; Application Process and Fees.*

- (a) **Permitted Use and Consent.** Collocation of a Small Wireless Facility on an existing Utility Pole or Wireless Support Structure, or a new or modified Utility Pole or Wireless Support Structure installed in a Covered Area shall be a permitted use, except in Supplemental Review Districts where such facilities are a conditional use, subject to administrative review, conditions and other requirements in Section 5. In accord with Article VIII, Section 15 of the State Constitution and related municipal code and ordinance provisions, the Town consents to the use of Public Rights-of-Way by permit holders acting in compliance with this Ordinance.
- (b) **Permit Required.** No person shall place a Small Wireless Facility in a Covered Area without first filing a Small Wireless Facility Application and obtaining a permit, except as otherwise provided in this Ordinance.
- (c) **Permit Applications.** All Small Wireless Facility Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the Town. The Applicant must 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. All documents submitted as part of a small wireless facility application may be subject to public disclosure in accordance with state law. An application is not complete until all required information is provided.

(d) **Application Requirements.** The Small Wireless Facility permit Application shall be made by the Applicant, or its duly authorized representative as noted in a notarized statement from a Person with the Applicant with authority to make such an authorization, and shall contain, at minimum, the following:

- (i) The Applicant’s name, address, telephone number and e-mail address;
- (ii) Facility owner’s name, address, telephone number and email address, if different from Applicant;
- (iii) Intended facility use: owner operated or owner leased capacity;
- (iv) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
- (v) A general description of the proposed scope of work for the Collocation of the Small Wireless Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
- (vi) Identification of any consultant that is acting on behalf of the Applicant and that is authorized to speak with the Town, or a designee of the Town, on the area of consultation for the Applicant even if the Applicant cannot be available;

- (vii) Verification from an appropriate representative of the Applicant that the Small Wireless Facility shall comply with all Applicable Codes;
- (viii) Verification of payment of the annual municipal consent or administrative fee for telecommunications companies to use Public Rights-of-Ways pursuant to Section 58-9-2230;
- (ix) Verification of local business license, if applicable;
- (x) Evidence the Applicant is duly authorized to do business in South Carolina;
- (xi) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission or the Federal Communications Commission or evidence that it is not required;
- (xii) A copy of an approved encroachment permit by the applicable governing agency, including but not limited to the South Carolina Department of Transportation and all documents required by the public authority as part of the encroachment permit application, if the proposed location is within a Right-of-Way; and,
- (xiii) If the proposed location is outside of a Right-of-Way, a statement that the Applicant has a lease, attachment agreement or other authorization from the owner of the Utility Pole or structure proposed for Collocation.

(e) **Routine Maintenance and Replacement.** An Application shall not be required for:

- (i) Routine maintenance;
- (ii) The replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height; or

(iii) The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles and/or Wireless Support Structures in compliance with the National Electrical Safety Code by a Wireless Services Provider or a Wireless Infrastructure Provider that is authorized to occupy the Public Rights-of-Way and that is remitting a consent, franchise, or administrative Fee pursuant to S.C. Code Ann. § 58-9-2230.

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

(g) **Consolidated Application.** An Applicant seeking to Collocate multiple Small Wireless Facilities may, at the Applicant's discretion, file a consolidated Application and receive a single permit for up to twenty (20) Small Wireless Facilities. Provided, however, the Town's denial of any site or sites within a single Application shall not affect other sites submitted in the same Application. The Town shall grant a permit for any and all sites in a single Application that it does not deny subject to the requirements of this Section.

(h) **Application Fees.** Unless otherwise provided by law, and except as to telecommunication companies exempted pursuant to S.C. Code § 58-9-2230, all Applications for permits pursuant to this Ordinance shall be accompanied by a Fee of \$100.00 for each Small Wireless Facility, except that the Fee for Small Wireless Facilities addressed in a consolidated Application shall be \$100.00 each for the first five Small Wireless Facilities and \$50.00 for each additional Small Wireless Facility up to a maximum of twenty (20) Small Wireless Facilities. For clarity, any Applicant that pays either a franchise, consent Fee, or administrative Fee pursuant to the requirements of S.C. Code § 58-9-2230 shall not be required to pay any building permit Fee, zoning

permit Fee, encroachment Fee, degradation Fee, or any other Fee assessed on a telecommunications provider for its occupation of or work within the ROW.

(i) **Interference with Public Safety Equipment.** A Small Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire and emergency services) equipment.

Section 4. *Action on Permit Application.*

(a) **Review of Small Wireless Facility Applications.** The Town shall review the Application for a Small Wireless Facility permit for conformity with applicable requirements of this Ordinance and all Applicable Codes, and may issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

(i) Within ten (10) days of receiving an Application, the Town must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Town must specifically identify the missing information.

(ii) Make its final decision to approve or deny the Application within sixty (60) days of submission of a completed Application.

(iii) Notify the Applicant in writing of its final decision, and if the Application is denied, specify the basis for a denial, including citations to federal, state or local code provisions and/or statutes on which the denial was based.

(iv) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Town and resubmit the Application within thirty (30) days of the denial, and the Town shall approve or deny the revised Application within thirty (30) days of receipt of it. The subsequent review by the Town shall be limited to the deficiencies cited in the original denial.

(b) **Review Deadline.** If the Town fails to either approve or deny an application within the 60-day review period without the consent of the applicant, the applicant may provide notice that the time period has lapsed.

(c) **Review of Eligible Facilities Requests.** Notwithstanding any other provisions of this Ordinance, the Town shall approve and may not deny Applications that constitute eligible facilities requests for modification of an eligible support structure that does not substantially change the physical dimensions of such structure as provided in 47 CFR 1.40001, within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

(d) **Compensation.** Subject to the limitations set forth in Section 3(h) 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 Town.

Section 5. *Requirements for Small Wireless Facilities in Covered Areas.*

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

(i) The Town may require a proposed Wireless Facility be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) from Covered Areas than existing utility structures, poles and equipment located

within two hundred (200) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure.

(ii) 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 material negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the Unified Development Ordinance Administrator 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.

(iii) Supplemental Review Districts may be subject to a higher level of review.

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

(i) The height of an Antenna of a Collocated Small Wireless Facility shall be limited to the greater of ten (10) feet above (a) the height of an existing or modified Utility Pole or Wireless Support Structure; or (b) the height of a new Utility Pole or Wireless Support Structure as provided in (ii) below.

(ii) The height of a new or modified Utility Pole, or Wireless Support Structure is limited to the greater of (a) the tallest Utility Pole, excluding Transmission Poles, or Wireless Support Structure located in the same Covered Area, measured from grade, in place within two hundred (200) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure as of the effective date of this Ordinance; or (b) in the absence of any such Utility Pole or Wireless Support Structure, either (i) forty (40) feet

in any area zoned exclusively for single family residential use, unless a waiver is granted for good cause shown, or (ii) fifty (50) feet in any other area.

(iii) Collocation is not allowed on a Decorative Pole less than twenty (20) feet in height.

(c) **Supplemental Review Districts.** Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures located in Supplemental Review Districts shall be a conditional use and subject to the design and aesthetic requirements and review processes for structures specified in this Ordinance establishing the Supplemental Review District(s) in addition to the requirement of this Ordinance, provided that the Town will work in good faith with the Applicant to accommodate the installation of Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures in Supplemental Review Districts to the fullest extent practicable. The Town reserves its right to maintain and implement the following types of Supplemental Review Districts.

(i) **Underground Districts.** A Wireless Services Provider or a Wireless Infrastructure Provider shall comply with nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground structures in the Covered Area in these districts. Nothing in this section shall prohibit the use or replacement of existing Utility Poles or Wireless Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to administrative review by the Unified Development Ordinance Administrator, appropriate design and concealment and a finding that such use does not increase the height by more than three (3) feet.

(ii) ***Historic and Design Districts.*** As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Historic District or a Design District, the Town may require that a Wireless Services Provider or a Wireless Infrastructure Provider comply with the design and aesthetic standards of the Historic District or Design District to minimize the impact to the aesthetics in a Historic District or on a Design District's Decorative Poles. If design and concealment treatments are determined on review by the Town to be insufficient to mitigate harm to the Historic District or Design District, the Application may be denied.

This section may not be construed to limit the authority of the Town 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 architectural, design or historical district reviews. An applicant seeking a Special Exception to construct a new Decorative Pole, Utility Pole or other Wireless 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, Utility Pole, Wireless Support Structure, or Small Wireless Facility outside of the Underground District and that placement of the Decorative Pole, Utility Pole, Wireless 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:

(i) No existing Utility Pole or Wireless Support Structure is located within the location search radius or to the extent a Utility Pole or Wireless Support Structure is located within the search radius, such Utility Pole or Wireless 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 (3) feet height limitation imposed in section 5(c)(i).

(ii) The only available option to deliver adequate wireless service coverage or capacity in the search radius requires modifications to an existing Utility Pole or Wireless Support Structure exceeding the three (3) feet height limitation imposed in section 5(c)(i) or the installation of a new Utility Pole or Wireless Support Structure for Collocation of a Small Wireless Facility, or

(iii) The applicant has demonstrated other circumstances that, in the reasonable discretion of the applicable review authority, 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.** Nothing in this Ordinance shall prohibit or otherwise limit the Town 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 in Section 3(e)(i) and (ii) of this Ordinance, and not to any provisions otherwise applicable to the additional Supplemental Review District. If a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily replaces such facilities in a manner that does not comply with Section 3(e)(ii) of this Ordinance, or if a Wireless Services Provider or a Wireless Infrastructure 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) **Repair of Damage.** A Wireless Services Provider or a Wireless Infrastructure Provider shall repair all damage to a Town Right-of-Way directly caused by the activities of the Wireless Services Provider or the Wireless Infrastructure Provider, while occupying, installing, repairing, or maintaining Wireless Facilities, Wireless Support Structures, Town Utility Poles, or Utility Poles and to return the Right-of-Way to its functional equivalence before the damage. If the Wireless Services Provider or the Wireless Infrastructure Provider fails to make the repairs required by the Town within forty-five (45) days after written notice, unless the Town and the Wireless Services Provider or the Wireless Infrastructure Provider agree in writing to a longer time period, the Town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The Town may maintain an action to recover the costs of the repairs.

Section 6. *Effect of Permit.*

(a) **Authority Granted: No Property Right or Other Interest Created.** A permit from the Town authorizes an Applicant to undertake only certain activities in accordance with the 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 Covered Area.

(b) **Duration.** Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Ordinance shall be valid for a period longer than twelve (12) months unless both Town and Applicant agree to a reasonable extension and all required Fees are paid for the term regardless of construction. The inability of the Applicant to obtain electrical power or backhaul transport services to serve the Wireless Facility such that it is operational within the twelve (12) months due to the action or inaction of third-party utility providers shall not result in the invalidity of the permit.

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

(a) **Notice.** Within ninety (90) days following written notice from the Town, a Wireless Services Provider or a Wireless Infrastructure Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Wireless Facilities or Wireless Support Structures within the Rights-of-Way whenever the Town, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the Rights-of-Way.

(b) **Emergency Removal or Relocation of Facilities.** The Town retains the right to cut or move any Wireless Facility or Wireless Support Structure located within its Rights-of-Way as the Town, 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 Town shall notify the Wireless Services Provider or the Wireless Infrastructure Provider and provide opportunity to move its own Wireless Facilities or Wireless Support Structure

prior to the Town cutting or removing a Wireless Facility or Wireless Support Structure and the Town shall notify the Wireless Services Provider or the Wireless Infrastructure Provider after cutting or removing a Wireless Facility.

(c) **Abandonment of Facilities.** Upon abandonment of a Wireless Facility or Wireless Support Structure within the Town Rights-of-Way, the Wireless Services Provider or the Wireless Infrastructure Provider shall notify the Town within ninety (90) days of such abandonment. Following receipt of such notice the Town may direct the Wireless Services Provider or the Wireless Infrastructure Provider to remove all or any portion of the Wireless Facility or Wireless Support Structure if the Town, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.

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

Section 8. Attachment to Town-Owned Utility Poles in the Covered Areas.

(a) **Annual Rate.** The rate to place a Small Wireless Facility on a Town-Owned Pole in Covered Areas shall be fifty (\$50.00) dollars per year per wooden pole or two hundred (\$200.00) dollars per year for all other Town-Owned Poles. This rate is in addition to reimbursement to the Town for any expenses for make-ready work. The Town reserves the right to require a pole

attachment agreement to further define the terms and conditions of attachments to Town-Owned 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) **Cease Payment.** A Wireless Services Provider or a Wireless Infrastructure Provider is authorized to remove its facilities at any time from a Town-Owned Pole in Covered Areas and cease paying the annual rate to the Town as of the next due date for payment following the removal.

(c) **Make-Ready.** For Town-owned Utility Poles in Covered Areas, the Applicant shall reimburse the Town for expenses for any reasonable make-ready work. The Town shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Services Provider or the Wireless Infrastructure Provider.

(d) **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 Utility Pole owned, or operated and accounted for as an asset of, a municipal electric utility.

Section 9. 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.

DONE, RATIFIED AND ENACTED this _____ day of _____, 2020.

This Ordinance was read and passed at First Reading on May 12, 2020.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Kimberly Chapman
Clerk, Town of Bluffton, South Carolina

A Public Hearing was held on this Ordinance on June 9, 2020.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Kimberly Chapman
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at Second and Final Reading held on June 9, 2020.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Kimberly Chapman
Clerk, Town of Bluffton, South Carolina



Light post with attached small cell antenna and associated ground equipment cabinet. (Orlando, FL)

Source: Orlando Sentinel



Traffic light with antenna attached. (San Antonio, TX)

Source: Rivard Report

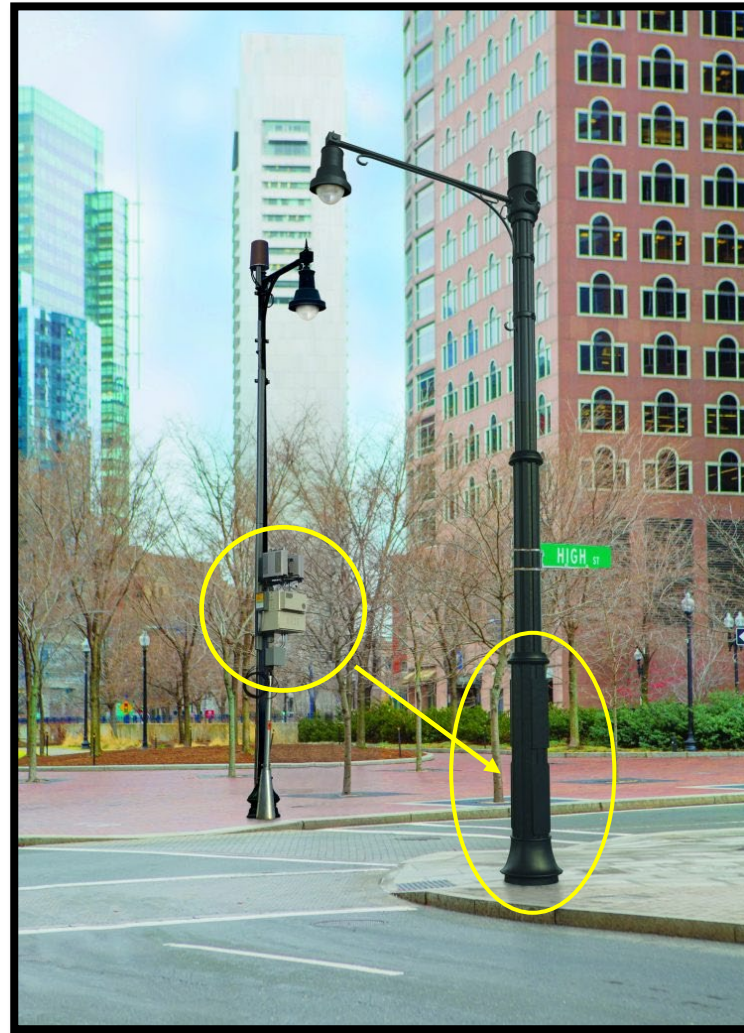


Photo simulation comparing concealed and unconcealed small cell facilities.

Source: AGL Media



Small cell facility (slim line pole) in Charleston, SC

Source: Post and Courier

Attachment 3

Proposed Motion for Formal Items X.4 – Consideration of Approval of an Ordinance to the Town of Bluffton Code of Ordinances, Chapter 28 – Utilities, Article 4 – Small Wireless Facilities in Covered Areas – Second and Final Reading

Town of Bluffton

“I move to approve the Second and Final Reading of An Ordinance Amending Chapter 28 Of The Code Of Ordinances For The Town Of Bluffton, South Carolina, Utilities, By Adopting Article 4 – Small Wireless Facilities in Covered Areas – Second and Final Reading.”

ORDINANCE NO. _____

AN ORDINANCE TO ESTABLISH THE STANDARDS FOR THE PLACEMENT OF SMALL WIRELESS FACILITIES IN COVERED AREAS IN THE TOWN OF SUMMERVILLE, SOUTH CAROLINA; AND FOR OTHER PURPOSES.

WHEREAS, the Town of Summerville (“City”) encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while managing Public Rights-of-Way in a manner that promotes the interests of the public health, safety and welfare; and,

WHEREAS, the City 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 City; and,

WHEREAS, the City recognizes that Small Wireless Facilities together with high capacity transport medium such as fiber optic cabling may be effectively deployed in Public Rights-of-Way; and,

WHEREAS, this Ordinance is intended to grant municipal consent to use of Rights-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 TOWN OF SUMMERVILLE, SOUTH CAROLINA, that Chapter 30, “Utilities” of the City Code is hereby amended to add a new Article IV entitled “Standards for Placement of Small Wireless Facilities in Covered Areas,” to read as follows:

Section 1. Definitions.

“*Antenna*” means communication equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

“Applicable Codes” means uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in Title 6, Chapter 9 of the South Carolina Code of Laws, local amendments to those codes authorized by state law, and local codes or ordinances which impose requirements defined in Section 5 of this Ordinance including objective design and concealment standards to regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.

“Applicant” means any person who submits an Application to a City and is a Wireless Services Provider or a Wireless Infrastructure Provider.

“Application” means a request submitted by an Applicant for a permit to (i) Collocate Small Wireless Facilities; or, (ii) construct, install, maintain, operate, replace or modify a Utility Pole or Wireless Support Structure.

“Cable, Communications, Fiber or Electric Easement” means an easement, granted to a cable or video service provider, a communications service provider (including without limitation a telephone utility), a fiber optics cable services provider, or an electric services provider created or authorized by state law to provide such services, that runs parallel to and abuts or within a Rights-of-Way and is occupied by existing Utility Poles or Wireless Support Structures carrying electric distribution lines, wires, cable, conduit, fiber optic cable for telecommunications, cable or electric service or supporting municipal street lights, or security lights. The term Cable, Communications, Fiber or Electric Easement excludes easements for service drops or lines connecting the customer’s premises to the cable, communications, fiber or electrical provider.

“City-Owned Pole” means (i) a Utility Pole owned or operated by the City in Covered Areas, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the City in a Covered Area that supports only Wireless Facilities. The term does not include a Utility Pole owned or operated by and accounted for as an asset of a municipal electric utility.

“Collocate” means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to an existing Wireless Support Structure or Utility Pole located in Covered Areas within the jurisdiction of the City. **“Collocation”** has a corresponding meaning.

“Covered Areas” means the surface of, and the space above and below, any public “Rights-of-Way,” “ROW,” “City Rights-of-Way,” “Public Rights-of-Way,” and/or “Cable, Communications, Fiber or Electric Easement” as those terms are defined herein.

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

“Decorative Pole” means a Pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or a temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal practices.

“Design District” means an area that is zoned, or otherwise designated by municipal ordinance, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

“Fee” means a one-time charge.

“Historic District” means an area that is zoned or otherwise designated as a Historic District under municipal, state or federal law and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

“Micro Wireless Facility” means a Small Wireless Facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.

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

“Rate” means a recurring charge.

“Rights-of-Way” or “ROW” or “City Rights-of-Way” or “Public Rights-of-Way” means that area on, below, or above a public roadway, highway, street, sidewalk, alley dedicated to, managed or controlled by the City, County or the State of South Carolina, but not including a federal interstate highway, in the City.

“Small Wireless Facility” means a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of not more than six (6) cubic feet; and (ii) all

other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

“Transmission Pole” means a pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

“Underground District” means an area that is designated by ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing above ground structures in a Covered Area and for which the City maintains and enforces standards on a uniform and nondiscriminatory basis.

“Utility Pole” means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control devices, traffic control or directional signage, or a similar function regardless of ownership, including City-Owned Poles. Such term shall not include structures supporting only Wireless Facilities, nor shall it include Wireless Support Structures.

“Wireless Facility” means equipment at a fixed location that enables Wireless Services between user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is Collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between Wireless Support Structures or Utility Poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an Antenna.

“Wireless Infrastructure Provider” means any Person including a Person authorized to provide telecommunications service in the State, that builds, installs or maintains Utility Poles, wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures.

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

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

“Wireless Support Structure” means a freestanding structure, such as a monopole or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole.

Section 2. Purpose and Scope.

(a) It is the intent of this Ordinance to establish uniform standards including, but not limited to:

- (i) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places;
- (ii) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (iii) Prevention of interference with other facilities and operations of facilities lawfully located in Covered Areas or public property;
- (iv) Preservation of the character of neighborhoods where facilities are installed;
- (v) Preservation of the character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places or locally designated Historic Districts; and,
- (vi) Facilitation of the rapid deployment of Small Wireless Facilities to provide the citizens with the benefits of advanced Wireless Services.

Section 3. Permitted Use; Application Process and Fees.

- (a) **Permitted Use and Consent.** Collocation of a Small Wireless Facility on an existing Utility Pole or Wireless Support Structure, or a new or modified Utility Pole or Wireless Support Structure installed in a Covered Area shall be a permitted use, except in supplemental review districts where such facilities are a conditional use, subject to administrative review, conditions and other requirements in Section 5. In accord with Article VIII, Section 15 of the State Constitution and related

municipal code and ordinance provisions, the City consents to the use of Public Rights-of-Way by permit holders acting in compliance with this Ordinance.

(b) **Permit Required.** No person shall place a Small Wireless Facility in a Covered Area without first filing a Small Wireless Facility Application and obtaining a permit, except as otherwise provided in this Ordinance.

(c) **Permit Applications.** All Small Wireless Facility Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the City. 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 City shall endeavor to protect materials so designated from public disclosure to the fullest extent permitted by state law.

(d) **Application Requirements.** The Small Wireless Facility permit Application shall be made by the Applicant, or its duly authorized representative as noted in a notarized statement from a Person with the Applicant with authority to make such an authorization, and shall contain the following:

- (i) The Applicant’s name, address, telephone number and e-mail address;
- (ii) Facility owner’s name, address, telephone number and email address, if different from Applicant;
- (iii) Intended facility use: owner operated or owner leased capacity;
- (iv) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
- (v) A general description of the proposed scope of work for the Collocation of the Small Wireless Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;
- (vi) Identification of any consultant that is acting on behalf of the Applicant and that is authorized to speak with the City, or a designee of the City, on the area of consultation for the Applicant even if the Applicant cannot be available;

- (vii) Verification from an appropriate representative of the Applicant that the Small Wireless Facility shall comply with all Applicable Codes;
 - (viii) Verification of payment of the annual municipal consent or administrative fee for telecommunications companies to use Public Rights-of-Ways pursuant to Section 58-9-2230;
 - (ix) Verification of local business license;
 - (x) Evidence the Applicant is duly authorized to do business in South Carolina;
 - (xi) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission or the Federal Communications Commission or evidence that it is not required;
 - (xii) A copy of an approved South Carolina Department of Transportation encroachment permit and all documents required by SCDOT as part of the encroachment permit application, if the proposed location is within a SCDOT Right-of-Way; and,
 - (xiii) If the proposed location is outside of a SCDOT Right-of-Way, a statement that the Applicant has a lease, attachment agreement or other authorization from the owner of the Utility Pole or structure proposed for Collocation.
- (e) **Routine Maintenance and Replacement.** An Application shall not be required for:
- (i) Routine maintenance;
 - (ii) The replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height; or
 - (iii) The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles and/or Wireless Support Structures in compliance with the National Electrical Safety Code by a Wireless Services Provider or a Wireless Infrastructure Provider that is authorized to occupy the Public Rights-of-Way and that is remitting a consent, franchise, or administrative Fee pursuant to S.C. Code Ann. § 58-9-2230.
- (f) **Information Updates.** Any amendment to information contained in a permit Application shall be submitted in writing to the City within ten (10) business days after the change necessitating the amendment.

(g) **Consolidated Application.** An Applicant seeking to Collocate multiple Small Wireless Facilities may, at the Applicant's discretion, file a consolidated Application and receive a single permit for up to twenty (20) Small Wireless Facilities. Provided, however, the City's denial of any site or sites within a single Application shall not affect other sites submitted in the same Application. The City shall grant a permit for any and all sites in a single Application that it does not deny subject to the requirements of this Section.

(h) **Application Fees.** Unless otherwise provided by law, and except as to telecommunication companies exempted pursuant to S.C. Code § 58-9-2230, all Applications for permits pursuant to this Ordinance shall be accompanied by a Fee of \$100.00 for each Small Wireless Facility, except that the Fee for Small Wireless Facilities addressed in a consolidated Application shall be \$100.00 each for the first five Small Wireless Facilities and \$50.00 for each additional Small Wireless Facility up to a maximum of twenty (20) Small Wireless Facilities. For clarity, any Applicant that pays either a franchise, consent Fee, or administrative Fee pursuant to the requirements of S.C. Code § 58-9-2230 shall not be required to pay any building permit Fee, zoning permit Fee, encroachment Fee, degradation Fee, or any other Fee assessed on a telecommunications provider for its occupation of or work within the ROW.

(i) **Interference with Public Safety Equipment.** A Small Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire and emergency services) equipment.

Section 4. Action on Permit Application.

(a) **Review of Small Wireless Facility Applications.** The City shall review the Application for a Small Wireless Facility permit for conformity with applicable requirements of this Ordinance, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

- (i) Within ten (10) days of receiving an Application, the City must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the City must specifically identify the missing information.
- (ii) Make its final decision to approve or deny the Application within sixty (60) days of submission of a completed Application.

(iii) Notify the Applicant in writing of its final decision, and if the Application is denied, specify the basis for a denial, including citations to federal, state or local code provisions and/or statutes on which the denial was based.

(iv) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial, and the City shall approve or deny the revised Application within thirty (30) days of receipt of it. The subsequent review by the City shall be limited to the deficiencies cited in the original denial.

(b) **Review Deadline.** If the City fails to act on an Application within the sixty (60) day review period (or within the thirty (30) day review period for an amended Application), the Applicant may provide notice that the time period for acting has lapsed and the Application is then deemed approved.

(c) **Review of Eligible Facilities Requests.** Notwithstanding any other provisions of this Ordinance, the City shall approve and may not deny Applications that constitute eligible facilities requests for modification of an eligible support structure that does not substantially change the physical dimensions of such structure as provided in 47 CFR 1.40001, within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

(d) **Compensation.** Subject to the limitations set forth in Section 3(h) 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 City.

Section 5. Requirements for Small Wireless Facilities in Covered Areas.

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

(i) The City may require a proposed Wireless Facility be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) from Covered Areas than existing utility structures, poles and equipment located within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure.

(ii) 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 City 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.

(iii) Supplemental review districts identified in Section 5(c) and listed in Appendix A may be subject to a higher level of review.

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

(i) The height of an Antenna of a Collocated Small Wireless Facility shall be limited to the greater of ten (10) feet above (a) the height of an existing or modified Utility Pole or Wireless Support Structure; or (b) the height of a new Utility Pole or Wireless Support Structure as provided in (ii) below.

(ii) The height of a new or modified Utility Pole, or Wireless Support Structure is limited to the greater of (a) the tallest Utility Pole, excluding Transmission Poles, or Wireless Support Structure located in the same Covered Area, measured from grade, in place within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure as of the effective date of this Ordinance; or (b) in the absence of any such Utility Pole or Wireless Support Structure, either (i) forty (40) feet in any area zoned exclusively for single family residential use, unless a waiver is granted for good cause shown, or (ii) fifty (50) feet in any other area.

(c) **Supplemental Review Districts.** Collocated Small Wireless Facilitates and new or modified Utility Poles or Wireless Support Structures located in supplemental review districts shall

be a conditional use and subject to the design and aesthetic requirements and review processes for structures specified in this Ordinance establishing the supplemental review district(s) in addition to the requirement of this Ordinance, provided that the City will work in good faith with the Applicant to accommodate the installation of Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures in supplemental review districts to the fullest extent practicable. The City reserves its right to maintain and implement the following types of supplemental review districts.

(i) **Underground Districts.** A Wireless Services Provider or a Wireless Infrastructure Provider shall comply with nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground structures in the Covered Area in these districts. Nothing in this section shall prohibit the use or replacement of existing Utility Poles or Wireless Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to administrative review by the zoning administrator, appropriate design and concealment and a finding that such use does not increase the height by more than three (3) feet.

(ii) **Historic and Design Districts.** As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Historic District or a Design District, the City may require that a Wireless Services Provider or a Wireless Infrastructure Provider comply with the design and aesthetic standards of the Historic District or Design District to minimize the impact to the aesthetics in a Historic District or Design District. If design and concealment treatments are determined on review by the City to be insufficient to mitigate harm to the Historic District or Design District, the Application may be denied.

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.** The Small Wireless Facility is necessary to provide the needed wireless coverage or capacity, and one or more of the following conditions exist supporting a Special Exception:

(i) No existing Utility Pole or Wireless Support Structure is located within the location search radius or to the extent a Utility Pole or Wireless Support Structure is located within the search radius, such Utility Pole or Wireless 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 (3) feet height limitation imposed in section 5(c)(i).

(ii) The only available option to deliver adequate wireless service coverage or capacity in the search radius requires modifications to an existing Utility Pole or Wireless Support Structure exceeding the three (3) feet height limitation imposed in section 5(c)(i) or the installation of a new Utility Pole or Wireless Support Structure for Collocation of a Small Wireless Facility, or

(iii) The applicant has demonstrated other circumstances that, in the reasonable discretion of the [board, etc.], 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) **Repair of Damage.** A Wireless Services Provider or a Wireless Infrastructure Provider shall repair all damage to a City Right-of-Way directly caused by the activities of the Wireless Services Provider or the Wireless Infrastructure Provider, while occupying, installing, repairing, or maintaining Wireless Facilities, Wireless Support Structures, City Utility Poles, or Utility Poles and to return the Right-of-Way to its functional equivalence before the damage. If the Wireless Services Provider or the Wireless Infrastructure Provider fails to make the repairs required by the City within forty-five (45) days after written notice, unless the City and the Wireless Services Provider or the Wireless Infrastructure Provider agree in writing to a longer time period, the City may undertake those repairs and charge the applicable party the

reasonable and documented cost of the repairs. The City may maintain an action to recover the costs of the repairs.

Section 6. *Effect of Permit.*

(a) **Authority Granted: No Property Right or Other Interest Created.** A permit from the City authorizes an Applicant to undertake only certain activities in accordance with the 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 Covered Area.

(b) **Duration.** Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Ordinance shall be valid for a period longer than twelve (12) months unless both City and Applicant agree to a reasonable extension and all required Fees are paid for the term regardless of construction. The inability of the Applicant to obtain electrical power or backhaul transport services to serve the Wireless Facility such that it is operational within the twelve (12) months due to the action or inaction of third-party utility providers shall not result in the invalidity of the permit.

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

(a) **Notice.** Within ninety (90) days following written notice from the City, a Wireless Services Provider or a Wireless Infrastructure Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Wireless Facilities or Wireless Support Structures within the Rights-of-Way whenever the City, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-of-Way.

(b) **Emergency Removal or Relocation of Facilities.** The City retains the right to cut or move any Wireless Facility or Wireless Support Structure located within its Rights-of-Way as the City, 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 City shall notify the Wireless Services Provider or the Wireless Infrastructure Provider and provide opportunity to move its own Wireless Facilities or Wireless Support Structure prior to the City cutting or removing a Wireless Facility or Wireless Support Structure and the City shall notify the Wireless

Services Provider or the Wireless Infrastructure Provider after cutting or removing a Wireless Facility.

(c) **Abandonment of Facilities.** Upon abandonment of a Wireless Facility or Wireless Support Structure within the City Rights-of-Way, the Wireless Services Provider or the Wireless Infrastructure Provider shall notify the City within ninety (90) days of such abandonment. Following receipt of such notice the City may direct the Wireless Services Provider or the Wireless Infrastructure Provider to remove all or any portion of the Wireless Facility or Wireless Support Structure if the City, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.

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

Section 8. Attachment to City-Owned Utility Poles in the Covered Areas.

(a) **Annual Rate.** The rate to place a Small Wireless Facility on a City-Owned Pole in Covered Areas shall be fifty (\$50.00) dollars per year per wooden pole or two hundred (\$200.00) dollars per year for all other City-Owned Poles. This rate is in addition to reimbursement to the City for any expenses for make-ready work. The City reserves the right to require a pole attachment agreement to further define the terms and conditions of attachments to City-Owned 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) **Cease Payment.** A Wireless Services Provider or a Wireless Infrastructure Provider is authorized to remove its facilities at any time from a City-Owned Pole in Covered Areas and cease paying the annual rate to the City as of the next due date for payment following the removal.

(c) **Make-Ready.** For City-owned Utility Poles in Covered Areas, the Applicant shall reimburse the City for expenses for any reasonable make-ready work. The City shall provide a

good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Services Provider or the Wireless Infrastructure Provider.

(d) **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 Utility Pole owned, or operated and accounted for as an asset of, a municipal electric utility.