

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: April 5, 2021		
Agenda Item: 5B	Prepared By: Kevin D. Blayton, P.E. City Engineer	
Agenda Section: Consent: Ordinance. Second Reading	Date: March 10, 2021	
Subject: Small Cell Code	Division: Public Works	
<u>Background:</u> City staff identified a local need to control the proliferation of wireless communication facilities. These concerns were escalated due to the enactment of federal and state regulations stipulating the approval process for wireless facility installations. These installations typically consist of antenna receiving and transmitting equipment installed by mobile phone carriers to serve cell phone customers and is often referred to as “5G” or “small cell” facilities. City Council studied these issues at a workshop on February 17, 2021 and determined the need for an ordinance. The ordinance has been prepared by national experts in the wireless communication industry with input and review by city staff and is proposed as City Code, Chapter 24, Regulations for Placement of Small Wireless Facilities in Public Rights-of-Way. With the adoption of this local Ordinance, the City specifies the process for application, review, and permitting to ensure safe installations that minimize impact to the community. <u>Recommended Action:</u> Approve the ordinance on second reading		
Reviewed by City Manager		Reviewed by City Attorney
Council Action: Motion By _____ 2nd By _____ To _____		

AN ORDINANCE

AN ORDINANCE TO ESTABLISH REGULATIONS FOR PLACEMENT OF SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF NORTH MYRTLE BEACH

WHEREAS, the City recognizes that Federal and State law mandates the City's consent to the installation of small wireless facilities within the City's public rights-of-way; and

WHEREAS, it is in the City's best interest to establish uniform standards for the siting of small wireless telecommunications facilities in public rights-of-way that also balance the City's need to control its public rights-of-way in order to:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways, utility poles, and other public ways and places; and
- (b) Prevent visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; and
- (c) Prevent interference with other right-of-way users and operations of existing facilities lawfully located in public rights-of-way or on contiguous public property; and
- (d) Preserve the character of neighborhoods where small wireless telecommunication facilities may be sited; and
- (e) Preserve 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
- (f) Facilitate the rapid deployment of small wireless facilities to provide citizens and visitors with the benefits of advanced wireless services; and

WHEREAS, the City wishes to ensure the continued compliance with existing state and city code, as well as applicable federal statutes and the rules and regulations of the FCC, as amended, including, but not limited to, the provisions of:

- (a) Section 19-22 of Chapter 19, Streets, Sidewalks, and Other Public Ways, of the City Code regarding permits required for construction in City public rights-of-way; and
- (b) Section 19-13 of Chapter 19 of the City Code requiring the removal of a transmission pole when the electrical provider has placed the utilities underground; and
- (c) Section 58-9-2220 of the South Carolina Code of Laws, governing retail telecommunications services business license taxes; maximum rates and Section 58-9-2230 of the South Carolina Code of Laws, governing public rights-of-way franchise, consent and administrative fees; authorized taxes; mobile telecommunications services; and

(d) Title 47 U.S. Code Section 253—Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7)—Mobile Services; Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018 (the "small wireless facility order") as codified in 47 C.F.R. § 1.6003 – Reasonable Periods of Time to Act on Siting Applications and the Federal Communications Commission Final Rules attached to the Small Wireless Facility Order as Appendix A, both as may be amended in the future (the "FCC final rules").

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:

Section 1: The ordinance is hereby approved.

Section 2: The ordinance shall be effective upon the date of passage.

DONE, RATIFIED AND PASSED, THIS _____ DAY OF _____, 2021.

ATTEST:

Mayor Marilyn Hatley

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: 3-15-2021
SECOND READING: 4-5-2021

REVIEWED:

City Manager

ORDINANCE: 21-12

[Code begins on next page.]

REGULATIONS FOR PLACEMENT OF SMALL WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 24-0. – Enactment and exceptions.

- (1) Pursuant to the authority conferred by Chapter 29 of Title 6 of the South Carolina Code of Laws, 1976, as amended and supplanted by all applicable laws, and to balance the interests of the residents of the city, wireless telecommunications providers, and wireless telecommunications customers in the siting of wireless telecommunications facilities within the city so as to protect the health, safety and integrity of residential neighborhoods and foster, through appropriate zoning and land use controls, a competitive environment for telecommunications carriers that does not unreasonably discriminate among providers of functionally equivalent personal wireless services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services, and so as to promote the city as a proactive city in the availability of personal wireless telecommunications service, the city council does ordain and enact into law the following regulations to be incorporated as new Chapter 24, Small Wireless Facilities in Public Rights-of-way, sections 24-0 to 24-51 of the city code; amending sections 19-6 and 19-9 of Chapter 19, streets, sidewalks and other public ways, of the city code to the extent necessary to make those sections consistent with this new Chapter 24. The department shall be authorized to issue administrative approval for the completion of these projects subject to the conditions of the approved site and building plans.
- (2) These regulations shall apply to the siting of all small wireless facilities in public rights-of-way, only, as defined in sections 24-2 below and to modifications to, the operation and removal of such small wireless facilities. The construction, installation, maintenance, modification, operation, and replacement of wireline backhaul facilities in the right-of-way are not addressed by this Article, and any such activity shall comply with the applicable provisions of the South Carolina Code of Laws including, but not limited to, section 58-9-280(A) and (B) and Chapter 12, Title 58.

ARTICLE 1. – IN GENERAL

Sec. 24-1. - Title and objectives.

This Chapter shall be known and may be cited as the “Small Cell Ordinance of the City of North Myrtle Beach, South Carolina.”

As authorized in Title 6, Chapter 29 of the South Carolina Code of Laws, the general purpose of this Chapter is to establish uniform standards for the siting of small wireless telecommunications facilities in public rights-of-way that also balance the city’s need to control its public rights-of-way in order to:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways, utility poles, and other public ways and places;
- (b) Prevent visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (c) Prevent interference with other right-of-way users and operations of existing facilities

lawfully located in public rights-of-way or on contiguous public property;

- (d) Preserve the character of neighborhoods where small wireless telecommunications facilities may be sited;
- (e) Preserve 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
- (f) Facilitate the rapid deployment of small wireless facilities to provide our citizens and visitors with the benefits of advanced wireless services.

It is the intent of this Chapter to ensure the continued compliance with existing state and city code, as well as applicable federal statutes and the rules and regulations of the FCC, as amended, including, but not limited to, the provisions of:

- (a) Section 19-22 of Chapter 19, streets, sidewalks and other public ways, of the city code regarding permits required for construction in city public rights-of-way.
- (b) Section 19-13 of Chapter 19 of the city code requiring the removal of a transmission pole when the electrical provider has placed the utilities underground.
- (c) Section 58-9-2220 of the South Carolina Code of Laws, governing retail telecommunications services business license taxes; maximum rates and Section 58-9-2230 of the South Carolina Code of Laws, governing public rights-of-way franchise, consent and administrative fees; authorized taxes; mobile telecommunications services;
- (d) Title 47 U.S. Code Section 253—Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7)—Mobile Services; Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018 (the "small wireless facility order") as codified in 47 C.F.R. § 1.6003 – Reasonable Periods of Time to Act on Siting Applications and the Federal Communications Commission Final Rules attached to the Small wireless facility order as Appendix A, both as may be amended in the future (the "FCC final rules").

Sec. 24-2. - Definitions.

For the purpose of this Chapter, certain words and terms are herein defined. Words used in the present tense shall include the future; words in the singular include the plural number, and words in the plural number include the singular number; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is mandatory and not merely permissive. Any words not herein defined shall carry their customary dictionary definition.

Accessory equipment: Any equipment serving or being used in conjunction with a wireless facility or wireless vertical support structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, electric meter, concealment elements, network demarcation equipment, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and cable, conduit, coax, vertical and horizontal runs for the provision of power, fiber, telephone, or other services.

Administrative approval: Approval granted by the department to an applicant after administrative review, which shall be demonstrated by the issuance of all applicable building and encroachment permits.

Administrative review: An evaluation by the department of an application for a small wireless facility that is submitted under this Chapter 24.

Antenna: Any exterior apparatus designed for the purpose of emitting or receiving radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.

Applicable codes: FCC, FAA and such codes as, but not limited to, uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in S.C. Code 1976, Title 6, Chapter 9, as modified from time to time, local amendments to those codes authorized by state law, and local codes or ordinances which impose requirements for small wireless facility installations under this Chapter 24, including objective design and concealment standards to regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.

Applicant: The owner of, or any other person with a recognized interest in, the small wireless facility to be sited, or its authorized agent, who submits an application under this Chapter 24. The applicant may be a wireless services provider or a wireless infrastructure provider.

Application for a small wireless facility: An application submitted by an applicant, including all ancillary building permit applications, for the siting of a small wireless facility within any right-of-way area, or for the installation, maintenance, modification, operation, or replacement of a vertical support structure in a right-of-way area for use with a small wireless facility. In the proper context, an application for small wireless facility may be referred to as an application.

Backhaul or backhaul network: The lines, or other network devices such as, but not limited to, microwave, that connect a provider's telecommunications facility to one or more applicant or carrier network elements, switching offices, long-distance providers, internet backbone, or the public switched telephone network.

Base Station: The equipment, including ancillary accessory equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass the vertical support structure.

(i) The term base station includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term also includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term also includes any vertical support structure other than those structures that, at the time the relevant application is filed with the city under this Chapter,

supports or houses equipment described in items (i) through (ii) above, which have been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the vertical support structure was not built for the sole or primary purpose of providing such support.

(iv) The term base station does not include vertical support structures that, at the time the relevant application is filed with the city under this Chapter, does not support or house equipment described in items (i)-(ii) of this definition.

Cable, communications, fiber or electric easement or encroachment: An easement or encroachment, 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 is within a rights-of-way and is occupied by existing utility poles or vertical 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 end user's premise to the cable, communications, fiber, or electrical provider.

City: City of North Myrtle Beach, South Carolina.

City code: The Code of Ordinances enacted by the City.

City-owned pole or vertical support structure: (i) a utility pole owned or operated by the city in right-of-way 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 vertical support structure owned or operated by the city in a right-of-way area that supports only wireless facilities.

Collocate: The mounting or installation of transmission equipment, together with the associated base station equipment, on a vertical support structure that is existing at the time the relevant application is filed with the city under this Chapter, whether or not such vertical support structure is already in use for wireless services, for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Concealment elements: Any design feature, including, but not limited to, painting, landscaping, and/or shielding requirements and restrictions on proportions, or physical dimensions in relation to the surrounding area or supporting structures that are intended to make a wireless facility or any supporting structure supporting it less visible, or invisible, to the casual observer.

County: Horry County.

Day: Calendar day unless the last day for the city or an applicant to act under this Article ends on a weekend, holiday, or time when all but city emergency services are closed due to weather or some unforeseen situation.

Decorative pole: 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 temporary holiday or special event attachments, have been placed or are permitted to be placed, according to nondiscriminatory municipal practices.

Department: The City's Department of Public Works or other members of the city's staff in conjunction with the department's application reviews.

Design district: An area that is designated by ordinance, zoning regulation, state law, private deed restriction, or other public or private restrictions, for which the city maintains and enforces design standards on a uniform and nondiscriminatory basis.

Existing or pre-existing: In existence at the time an application is filed.

FCC: The Federal Communications Commission.

FCC final rules: The Federal Communications Commission Final Rules attached as Appendix A to the small wireless facility order, as may be amended from time to time.

Fee: A charge for a specific service.

Historic district: 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.

Light pole: A pole upon which is installed a light standard or other illumination device designed to illuminate a limited specific area.

Modification: Any addition, removal, or alteration of any kind, to the small wireless facility, including altering and/or removing its camouflaging or appearance, except for routine maintenance or replacement with equipment that has identical dimensions and appearance.

Permit: A written authorization, in electronic or hard copy format, required to be issued by the city's planning and development department, to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a vertical support structure upon which a small wireless facility is to be collocated in a right-of-way area.

Permittee: The responsible person, its' successors and assigns or approved authorized agent, who is required to comply with any administrative approval or permit issued under this Chapter 24. When the applicant is the authorized agent for the person who owns the federal license to broadcast from the wireless facility, then the permittee shall also be such owner.

Person: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the city.

Pole: A type of vertical support structure, such as a utility pole, light pole, traffic pole, decorative pole, flagpole, or other similar pole, made of wood, concrete, metal, or other material, which is lawfully located or to be lawfully located within a right-of-way.

Public works director: The director of the Public Works Department for the city or his or her designee.

Rate: A recurring charge.

Rights-of-way or ROW or city rights-of-way or public rights-of-way: That space on, below, or above a public roadway, highway, street, sidewalk, alley dedicated to, managed or controlled by the city, county or the state, but not including a federal interstate highway that is located within the city limits but is not controlled or maintained by the city.

Rights-of-way area: The surface of, and space above and below, any public rights-of-way, ROW, city rights-of-way, public rights-of-way, and cable, communications, fiber or electric easement.

Routine maintenance: Work on a wireless facility that involves replacement of equipment that is the same or smaller in weight and dimensions as the approved small wireless facility and does not (i) result in any change to the approved external appearance or dimension, (ii) increase the weight or loading of the vertical structure that would require modification to the vertical structure to accommodate the same; or (iii) impact traffic flow. The collocation of a new wireless carrier on a vertical support structure permitted under this Chapter 24 shall not be considered routine maintenance under this Chapter.

Site plan: A detailed proposal which includes detailed engineering drawings, construction drawings and other documentation as required by the department, from time-to-time, of proposed improvements related to the siting, maintenance, modification, operation, or replacement of a small wireless facility within any right-of-way area.

Small wireless facility or small cell: A wireless facility that meets all of the following conditions: (i) the vertical support structure on which antenna facilities are mounted is 50' or less in height, or is no more than 10 percent taller than other adjacent existing vertical structures of similar type and character, or is not extended to a height of more than 10 percent above its preexisting height as a result of the installation of new wireless facilities; and (ii) each antenna (excluding associated antenna equipment) is no more than 6 cubic feet in volume; and (iii) all electronic and ancillary equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and (iv) the wireless facility does not require vertical support structure registration; and (v) the wireless facility is not located on tribal lands; and (vi) the facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b). The following types of associated accessory equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation equipment provided by third party interconnection networks that have been approved by the city under separate permit or license, approved ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

Small wireless facility order: The Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018, as may be amended from time to time.

State: State of South Carolina.

Tower or telecommunications tower: A specific type of vertical support structure, such as, but not limited to, a lattice tower, guyed tower, or monopole tower, built for the sole or primary purpose of supporting FCC-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated

with that telecommunications tower. This definition is intended to be consistent with that definition set forth in 47 C.F.R. 1.40001(b)(9).

Transmission equipment: Equipment that facilitates transmission of FCC-licensed or authorized wireless communication services, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular or backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Traffic pole: A pole that is used in whole or in part for the purpose of carrying traffic control devices regardless of ownership.

Transmission pole: A pole that is used to carry high voltage electric transmission (as opposed to distribution) lines.

Underground district or underground utility corridor: An area that is designated by ordinance, zoning regulation, state law, private deed restriction, or other public or private restrictions, that prohibit installing above-ground structures in a right-of-way area and for which the city maintains and enforces standards on a uniform and nondiscriminatory basis.

Utility pole: A wood pole or similar vertical support structure of any material 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 or decorative poles.

Vertical support structure: A pole, tower or telecommunications tower, base station, or other above-ground structure including, but not limited to, buildings, water tanks, light poles, flag poles, and utility poles, whether or not the structure has an existing wireless facility, that is used or will be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

Wireless infrastructure provider: Any person, including, without limitation, a person authorized to provide telecommunications service in the state; that builds, installs or maintains wireless vertical support structures, wireless communication transmission equipment, or wireless facilities.

Wireless services: Any services provided using licensed or unlicensed spectrum, including the use or provision of Wi-Fi, whether at a fixed location or mobile, delivered to the public using wireless facilities.

Wireless service(s) provider: A person who provides wireless services.

Wireless telecommunication facility or wireless facility or telecommunications facility: Any equipment and physical assets owned by a permittee or by a permittee's end-users and under the control of the permittee, at a fixed location, that enables wireless services between end-user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, antennas, satellite transmit and receive equipment, coaxial or fiber-optic cable, regular and backup power supplies, and comparable

equipment, regardless of technological configuration. The term includes small wireless facilities, accessory equipment, aboveground and underground fiber optic and coaxial cable, conduit, wires, and any vertical support structure whether existing, replacement or new, and whether referred to singly or collectively. The term does not include the wireline backhaul facilities, coaxial or fiber optic cable that is between wireless vertical support structures or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna. This term also shall not include any tower and antenna under 100 feet in total height which is owned and operated by an amateur radio operator licensed by the federal communications commission.

Writing: Any writing requirement under this Chapter 24 may be performed via electronic notice through the city's public website, as per city requirements.

Sec. 24-3. - Fees.

- (1) The city council shall establish a collection procedure and a schedule of fees, charges, and expenses for applications for small wireless facilities under this Chapter. The schedule of fees shall be posted on the city's website. Any fees charged for any application necessary for the approval of all components of the small wireless facility shall be reasonable, nondiscriminatory, and designed to recover no more than the city's direct costs for processing an application and shall not violate any requirements set forth in the small wireless facility order, the FCC final rules, S.C. Code 1976, §§ 58-9-2220, 58-9-2230 and 58-11-850, and any future legislation approved by the state General Assembly.
- (2) No permits shall be issued for the siting of a small wireless facility until all applicable fees, charges and expenses have been paid in full.

Sec. 24-4. - Amendments.

This Small Cell Ordinance may be amended from time to time by city council.

Sec. 24-5. - Minimum requirements.

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standards shall govern.

Sec. 24-6. - Complaints regarding violation.

Whenever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the assistant to the city manager, who shall record properly such complaint, immediately investigate, and act thereon in accordance with this chapter.

Sec. 24-7. - Penalties for violation.

Violation of the provisions of this Chapter or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall upon conviction thereof be fined as provided in section 1-6 of Chapter 1, general provisions, of the city code. Each day such violation continues shall be considered a separate offense. The owner or tenant of any building, vertical support structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy a violation.

Sec. 24-8. - Legal status provisions.

- (1) *Separability*: Should any section or provisions of this Chapter be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Chapter as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.
- (2) *Repeal of conflicting ordinances*: All ordinances and parts of ordinances in conflict herewith are repealed to the extent necessary to give this Chapter full force and effect.
- (3) *Non-waiver*. Failure of city to insist on strict performance of any of the conditions, covenants, terms or provisions of any approved application or this Article or to exercise any of its rights hereunder shall not waive such rights, but the city shall have the right to enforce such rights at any time and take such action as might be lawful or authorized, either in law or equity.
- (4) *Preservation of authority*. This Chapter and any approved application under this Chapter is subject to the constitution and laws of the State, 47 U.S. Code Section 253, 47 U.S. Code Section 332(c)(7), the small wireless facility order and the FCC final rules (collectively the "Applicable Laws"). In conforming this Chapter to the requirements of S.C. Code Ann. § 58-9-2200 et seq. as enacted by the state's General Assembly in 1999, and the applicable laws, the city does not concede or imply that the General Assembly has the authority to restrict by general law the powers denied to the General Assembly and reserved to the state's municipalities by Article VIII Section 15 of the state's Constitution, or that the United States Congress or the FCC has the authority to restrict by general law or rules and regulations protection provided to it under 47 U.S.C. Section 332(c)(7)(A) regarding its authority over decisions regarding the placement, construction, and modification of personal wireless service facilities as those terms are defined therein, or that protection provided to it under 47 U.S. Code Section 253(c) to manage the public rights-of-way, or to require fair and reasonable compensation for the use of the public rights-of-way.
- (5) *Effective date*: This Chapter shall take effect and be in force upon its adoption by city council.

Secs. 25-9. - 25-15. - Reserved.

ARTICLE II. – SITING OF SMALL WIRELESS FACILITIES

Sec. 24-16. - General.

- (1) *Permitted use.* Subject to those limitations set forth in section 25-18(2), the siting of small wireless facilities within any right-of-way area, and the installation, maintenance, modification, operation, and replacement of a vertical support structure in a right-of-way area for use with a small wireless facility shall be considered a use by right following administrative approval in accordance with Article IV of this Chapter 24. The siting of small wireless facilities outside the right-of-way areas shall be considered under Chapter 24 – Wireless Communications Facilities Code. Any administrative approval granted under this Chapter 24 shall be operative and remain in effect only so long as federal law 47 U.S.C. 1455, and the FCC regulations established under 47 CFR 1.40001 and state law, mandate the city's approval of an application to site small wireless facilities in rights-of-way.
- (2) *Relation to attachment rights and placement of facilities outside the right-of-way areas.* This Chapter and any administrative approval granted hereunder does not confer upon any applicant or permittee any right to place or collocate or to install anything on land or structures located outside of the right-of-way areas that are owned by the state, any county, the city or by a third party. In addition to the requirements of this Article, the applicant is required to obtain and is responsible for any authorizations that may be required from the owners of any structure or private property for the installation, operation or maintenance of any small wireless facility.

Section 25-17. – Towers not permitted.

No type of tower, other than a small wireless facility, shall be permitted in the right-of-way areas.

Sec. 24-18. – Administrative approval required.

- (1) No person shall collocate, modify, or remove a small wireless facility, or modify or install or remove a vertical support structure in the right-of-way areas under this Chapter without first obtaining administrative approval.
- (2) Any permit granted pursuant to this Chapter 24 shall have the following use restrictions:
 - (a) The right to use the right-of-way area under the permit shall be non-exclusive;
 - (b) The right to use the right-of-way area under the permit shall be at the permittee's solecost and expense;
 - (c) The right to use the right-of-way area shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the right-of-way area;
 - (d) The permit does not grant any permittee any property interests in the right-of-way area;
 - (e) No permit issued under this Chapter 24 is divisible or assignable, and the permittee may not grant any person the right to use or occupy the right-of-way area without the prior written approval of the public works director; except that a permittee may assign a permit to its parent company or subsidiary, or the parent of or subsidiary of a parent company,

or to any entity which acquires all or substantially all of the permittee's assets in the city's market by reason of a merger, acquisition or other business reorganization; and

- (f) A permittee's use of the right-of-way area shall be limited to the specific and exclusive purpose stated herein and in the approved site plan application and the ancillary permit issued by the department.
- (3) In the event of an unapproved or unpermitted installation or collocation of a small wireless facility in a right-of-way area, the city shall be entitled, in its sole discretion, to restore the right-of-way area to its condition prior to the unpermitted collocation or installation and to charge the responsible person its reasonable, documented cost of restoration, plus a penalty of \$1,000. This person shall not be entitled to receive any new city permits until the person has paid the amount assessed for such restoration costs unless the person has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by an administrative law court.

Sec. 24-19. – Written consent requirement.

In addition to the items required under section 25-18(1), above, no person shall collocate a small wireless facility on a city-owned pole or vertical support structure without first entering a master license agreement with the city.

ARTICLE III. – REQUIREMENTS FOR SMALL WIRELESS FACILITIES

Sec. 24-20. – General.

(1) *Design.*

- (a) All attachments and installations under this Chapter 24 shall comply with the design guidelines maintained by the department and published on the city's website, which are meant to ensure that any wireless facilities to be placed in the right-of-way areas, including small wireless facilities, vertical support structures, and all accessory equipment, are consistent with the overall design and character of the surrounding area and the corridor in which they are sought to be placed, including, but not limited to, all publicly available planned corridor improvements. Such design requirements shall be consistent with those requirements outlined in the small wireless facility order, the FCC final rules, any limitations imposed by state law, and any future legislation approved by the state General Assembly. The department may amend the design requirements from time to time, in its discretion, as technology and the nature of the installation of small wireless facilities evolve.
- (b) In order to provide guidance to applicants concerning the design of facilities which comply with this Article, the department shall maintain and publish on the city's website a catalog of the site-specific designs that have been approved by the department, it being recognized that the same design as those set forth in the catalog should in most instances be deemed appropriate for a comparable location. Any person may request the department to review any new design for installation in specific right-of-way areas, and if approved, to add the design to the catalog.

- (2) *Maximum height of antennas.* Unless there are more restrictive requirements set forth in this Article or in the design requirements for right-of-way areas that are located in existing or future underground utility corridors, historic districts, or design districts,
- (a) the height of an antenna of a collocated small wireless facility shall be limited to the greater of ten (10) feet above:
 - (i) The height of the existing vertical support structure; or
 - (ii) The height of any new or modified vertical support structure as provided in section 25-20(2)(b), below.
 - (b) the height of a new or modified vertical support structure is limited to the greater of the tallest existing vertical support structure of similar type and character located in the same right-of-way area, measured from grade, that is in place within 500 linear feet of the same right-of-way area as the proposed vertical support structure, but not to exceed 50 feet in total height, including the attached antennas, or, in the absence of any such existing vertical support structure, either (i) 40 feet in an area zoned exclusively for single-family residential use or (ii) 50 feet in any other area. It shall be the responsibility of the applicant to provide visual evidence and surveys as part of the application demonstrating the type and height of any existing utility pole, excluding transmission poles, located in the same right-of-way area located within 500 linear feet of the proposed installation of the small wireless facility. It shall be the responsibility of the applicant to provide visual evidence and surveys as part of the application demonstrating the type and height of any existing vertical support structure, excluding transmission poles.
- (3) *Height clearance.* All attachments to new or modified poles must have a clearance of at least 7 feet above ground level for all sidewalks and a clearance of at least 18 feet above ground level for all roads.
- (4) *Underground utility corridors.*
- (a) 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 infrastructure in the right-of-way areas in existing and future underground utility corridors. Where small wireless facilities have been permitted under this Article in a right-of-way area and the city enacts future nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground infrastructure in the right-of-way areas in the new underground utility corridor, all small wireless facilities permitted under this Article III shall, at the expense of the permittee, be removed from the right-of-way area or all ground-based equipment belonging to the applicable installation shall be placed underground or mounted to the pole unless otherwise directed by the city.
 - (b) Nothing in this section 25-20(4) shall prohibit the use or modification or replacement of existing utility poles in underground utility corridors for the collocation of small wireless facilities with alternative vertical support structures of appropriate design and concealment elements, subject to administrative review by the department.
 - (c) When there are no existing vertical support structures in the right-of-way areas that are

available for modification or replacement in accordance with the design requirements contained in this Article III, an applicant may file an application to construct a new pole subject to design review and approval by the department.

- (5) *Historic and design districts.* As a condition for administrative approval of a new vertical support structure in a historic or design district, the applicant must 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 the design district.
- (6) *Decorative poles.* Collocations on a decorative pole or the replacement of a decorative pole shall conform to the design aesthetics of the original decorative pole.
- (7) *Signage.* Each small wireless facility shall contain a sign, not exceeding 4"x 6" in size, in an area that is visible to the public and which contains the name, location identifying information, and emergency telephone number of such facility's owner or operator. Except as required by applicable laws, no additional signage or advertising may be posted on a small wireless facility, including ground-mounted cabinets or other ancillary equipment.
- (8) *Electrical supply.* The city will not be responsible for providing any required electrical power service to any small wireless facility. Instead, each applicant and permittee shall be solely responsible for obtaining such service. No permittee may secure its utilities by sub-metering from the city, and each permittee shall have installed separate metering as specified by the utility.
- (9) *Fiber connection.* Each applicant or permittee shall be solely responsible for obtaining access and connection to fiber optic lines or other interconnection and backhaul solutions that may be required for its small wireless facility. In addition, all civil works required to bring these backhaul solutions to the small wireless facility must be pre-approved as part of the approval process under Article IV. Any easement or other land-use action required to bring fiber optic or other interconnection and backhaul solution to the small wireless facility shall be the sole responsibility of the applicant or permittee.
- (10) *Generators.* No small wireless facility shall include a ground-based back-up generator or other electrical backup method (including batteries).
- (11) *Overhead lines prohibited.* Subject to the requirements of section (4)(a) of section 25-20, no overhead utility or backhaul lines may be installed as part of a small wireless facility unless such lines existed in the desired location at the time an application is submitted under this Chapter 24.
- (12) *Traffic poles.* Small wireless facilities may be placed on the horizontal mast arm or vertical component of any existing traffic pole provided that all conditions of this code have been met and any structural issues have been resolved to the satisfaction of the City in its sole discretion.
- (13) *Ground equipment.* Ground-mounted equipment may not be located more than 7 1/2 feet in radial circumference from the base of the vertical support structure that the equipment supports, unless the department believes that a greater distance from the base of the vertical support structure is necessary to ensure compliance with design

guidelines or to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety.

- (14) *Electrical conductors.* No small wireless facility may be sited within 7 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 and produces a suitable maintenance plan and safety measures that are approved by the department.

Sec. 24-21. - Preservation of authority.

Section 25-20 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. In addition, no administrative approval granted, or permit issued, under this Chapter 24 shall create a precedent that is contrary to this code or shall affect a revision of this code, regardless of whether the administrative approval or permit was issued correctly or not.

Sec. 24-22. - Existing design districts.

Design districts shall be published on the city's public website. Nothing in this Article shall prohibit or otherwise limit the city from establishing new design districts; provided however, facilities for which administrative approval was pursuant to this Article prior to the establishment of the additional design districts shall remain subject to the provisions of this Article, including routine maintenance of those facilities and structures as set out in section 25-34, below, but not to any provisions otherwise applicable to the additional design district. If a permittee voluntarily replaces or relocates such facilities, such replacement or relocation is subject to the new provisions and requirements of the new design district.

Sec. 24-23. - Attachment to city-owned poles or vertical support structures in right-of-wayareas.

- (1) *Consent.* No small wireless facility shall be attached to a city-owned pole or a vertical support structure in a right-of-way area without the city's prior written consent to such attachment.
- (2) *Rate.* The permittee shall pay the city an annual attachment fee for each attachment under this section. The rate of the attachment fee will be set, from time to time, by the city in an amount that is consistent with those benchmarks set forth in state law, the small wireless facility order and final FCC rules so long as they shall govern such rates. Nothing in this section 25-23 or this Article IV shall obligate the city to make available any city-owned pole or vertical support structure for use by any person for the placement of a small wireless facility in a right-of-way area.
- (3) *Attachment agreement.* The city shall also require the applicant to enter a master license agreement to further define the terms and conditions of such attachment.
- (4) *Make-ready.* When an application is granted under this section 25-23, the permittee, at its sole cost and expense, shall perform any tests or prepare any reports required by the

city to determine the amount of the make-ready work necessary to facilitate the attachment. In addition to the above, the permittee shall provide an estimate and plans for the make-ready work, perform or cause to be performed the work, and shall pay for all other costs the city may incur as a result of allowing the use of the city-owned structure, including, when appropriate, the cost to replace the structure.

Sec. 24-24. – Density.

The department may limit the placement of new or additional small wireless facilities within specific congested segments of the right-of-way areas if there is insufficient space to accommodate all the requests of applicants to occupy and use the right-of-way area. In making such decisions, the department shall, to the extent possible, accommodate all existing users and pending applicants, and shall be guided primarily by considerations of the public interest, the width and physical condition of the public right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way area and established plans for public improvements and development projects which have been determined to be in the public's interest.

ARTICLE IV. APPLICATION PROCESS

Sec. 24-25. – Application procedures.

All applications under this Chapter 24 to collocate small wireless facilities on new or modified existing vertical support structures, or to modify, replace, or remove such lawful, pre-existing wireless facilities, shall be through on-line submissions via the city's public website, using the city's standard small cell application form, which may be amended from time-to-time 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.

Sec. 24-26. - Batching of applications.

- (1) All applicants must submit separate applications for each request under this Chapter 24 except that 1 single consolidated application may be submitted for up to 30 small wireless facilities when such facilities are of an approved design under section 25-20(1)(b) and they, collectively, will be sited inside 1 geographic location that is no more than 2 miles in diameter.
- (2) One single permit for the collocation of multiple small wireless facilities may be issued under this section; provided, however, the denial of 1 or more small wireless facilities in a consolidated application will 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.

Sec. 24-27. - Information updates.

Any amendment to information contained in an application shall be uploaded to the on-line permitting system within 10 business days after the change necessitating the amendment. The submittal of an amendment under this section 25-27 shall restart the timeline for the

application's review unless the submittal is pursuant to a notice of an incomplete application under section 25-31(1).

Sec. 24-28. - Multiple applications.

If the department receives multiple applications from different applicants for the placement of small wireless facilities at or near the same location, the department, after providing all affected applicants an opportunity for comment, may require the consolidation of certain existing and new small wireless facilities into a single structure or develop a non-discriminatory means of allocating locations, with the goal of preventing the proliferation of vertical support structures in the right-of-way areas.

Sec. 24-29. - Application requirements.

All information and certifications required in the applications referenced in section 25-25, above, must be submitted for an application to be considered complete.

Sec. 24-30. – Review of small wireless facility applications.

The department shall review any application which requests approval of the location of or the installation of a new, modified, or replacement of a pole or vertical support structure, as well as the collocation of a small wireless facility and any accessory equipment on an existing pole or vertical support structure.

Sec. 24-31. - Timelines for review and approval/denial.

- (1) *Initial review/notification of incompleteness.* The department will determine whether an application submitted under this Article is complete within 10 days of receiving such application. If an application is incomplete, the department will notify the applicant, in writing, that the application is incomplete and specifically identify the missing documents or information that the applicant must submit to render the application complete. An application is incomplete if it omits or withholds any required information or fails to provide information in sufficient detail to determine whether the work will be performed in accordance with and will result in an attachment or installation that complies with this Chapter 24, all applicable code, and other applicable laws. If the applicant responds, but the resubmission remains incomplete, the department shall notify the applicant in writing that the application remains incomplete within 10 days of the resubmission and will identify the missing documents or information that the applicant must submit to render the application complete. The department will deem an application as withdrawn when there is a failure to respond or when a resubmission remains incomplete after 60 days of a notice of an incomplete application or an incomplete resubmission by the department.
- (2) *Timing of a final decision.* The department shall have 60 days for applications for collocations on existing vertical support structures and 90 days for new construction of such facilities in which to render a decision. These timeframes commence once an application is submitted; however, each notice of an incomplete application or incomplete resubmission tolls the clock on that date that such notice is provided to the applicant until that date upon which the application is resubmitted.

- (3) *Tolling agreement.* Notwithstanding the time requirements set forth herein, the department may enter into an agreement with any applicant extending the time for action on any application.

Sec. 24-32. - Approval or denial of applications.

- (1) *In general.* All applications will be processed on a nondiscriminatory basis.
- (2) *Standard of review.* If the department determines that the application for a small wireless facility complies with all requirements of Article III, this Article, and other such applicable code, the application shall be approved, except as provided in section 25-32(3), below.
- (3) *Exceptions.* The department may deny an application when the proposed collocation, installation, modification, or replacement:
 - (a) interferes with the safe operation of traffic control or public safety equipment;
 - (b) interferes with sight lines or clear zones for transportation or pedestrians;
 - (c) interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (d) fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements;
 - (e) fails to comply with laws of general applicability that address the occupancy, maintenance, or management of the right-of-way and that are not otherwise inconsistent with this Article;
 - (f) when it is determined that, due to insufficient capacity, safety, reliability, or engineering concerns, existing infrastructure is not adequate to support the proposed installation; the installation or modifications will unduly interfere with other existing uses of the rights-of-way; or
 - (g) when the department determines that the design and concealment elements are insufficient to mitigate potential impact to the historic district or design district in which the facility is sought to be sited.
- (4) *Notification of decision.* The department shall notify the applicant, in writing, of the final decisions, and if any application is denied, specify the basis for a denial, including citations to federal, state or local code provisions or statutes on which the denial was based.
- (5) *Revised applications/resubmittal.* Notwithstanding an initial denial, the applicant may cure the deficiencies identified by the department and resubmit the application within 30 days of the denial without paying an additional application fee, and the department shall grant administrative approval or deny the revised application within 30 days of receipt of such resubmission. The subsequent review by the department shall be limited to the deficiencies cited in the original denial. If the city fails to act on a revised application within this 30-day period, the applicant may provide the city with written notice that the time period for acting has lapsed, and the city shall then have 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 city does not render its written decision within the noticed 5 days. A timely denial under this subsection (6) shall be deemed final and the applicant shall be required to submit a new application to move forward.

- (6) *Appeals.* Any decision adverse to the applicant must be appealed to the Administrative Law Court. To the extent that an applicant makes a claim that any preliminary denial will result in an effective prohibition within the meaning of 47 U.S. Code Section 253(a) or 47 U.S. Code Section 332(c)(7), such claim must be supported by testimony and presented by persons with the requisite knowledge, credentials and qualifications to make and establish such facts to prove the claim.

Sec. 24-33. - Compensation.

Every administrative approval of an application shall include, as a condition, the applicant's agreement to pay such lawful business license taxes, administrative fees and consent fees as are permitted under applicable municipal, state 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.

Sec. 24-34. – Routine maintenance.

An application shall not be required under this Chapter for routine maintenance of a permitted small wireless facility except that road and sidewalk closures to prosecute the same shall require compliance with the city's established rules and notification processes associated with maintenance in the public rights-of-way as those rules may be modified from time to time.

Sec. 24-35. – Modifications to pre-existing wireless facilities. (Eligible Facilities Request per 47 C.F.R. §1.6100)

- (1) *Substantial modifications.* Notwithstanding any other provisions of this Article, the department shall grant administrative approval and may not deny applications for any modifications to pre-existing support structures and base stations in the right-of-way area, which do not substantially change the physical dimensions of such facilities. A modification shall be determined to be a substantial change to the physical dimensions of the subject vertical support structure if the modification meets any of the following criteria:
- (a) The modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the vertical support structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the vertical support structure;
 - (b) The modification entails any excavation or deployment outside the permitted area;
 - (c) The modification would defeat the concealment elements of the eligible vertical support structure; or
 - (d) The modification does not comply with conditions associated with the siting approval of the construction or modification of the eligible vertical support structure or base station equipment, provided however that this limitation does not apply to any

modification that is non-compliant only in a manner that would not exceed the thresholds identified in items (a) through (c) of this definition.

- (2) *Expedited review for eligible vertical support structures.* The notice of incomplete submissions and tolling practices under section 25-29 shall apply to this section 25-35(2). Upon submission of a complete application under section 25-35(1), the department shall approve, or approve with conditions, the application within 60 days. Conditions of approval may include compliance with previously imposed conditions of approval, generally applicable building, structural, electrical, and safety codes or other laws, including this code, that codify objective standards reasonably related to health and safety. Any approval shall be operative, and any permit issued under this subsection shall remain in effect only so long as federal law, 47 U.S.C. 1455, and the FCC regulations established under 47 CFR 1.40001 require the approval of an eligible facilities request as defined therein. By approval, the city solely intends to comply with a requirement of federal law and not to grant any property right or interests except as compelled by federal law.
- (3) *Physically substantial modifications.* Modifications not defined in section 25-35(1) shall be considered physically substantial and may be approved or denied at the discretion of the department.

Sec. 24-36. – Right to relocate.

- (1) For applications to install a small wireless facility in residential, historic or design districts, the department may propose an alternate location in the right-of-way that is situated within 150 feet of the location set forth in the application. The applicant or permittee shall use the city's proposed alternate location unless the location is not technically feasible or imposes significant additional costs.
- (2) For applications to install a small wireless facility on a decorative vertical support structure or for applications to replace any decorative vertical support structure to deploy small wireless facilities, the city may propose an alternate location in the right-of-way that is situated within 150 feet of the location set forth in the application. The applicant or permittee shall use the city's proposed alternate location unless the location is not technically feasible or imposes significant additional costs.
- (3) In each instance above, the applicant or permittee shall certify that it has made a determination that the proposed alternative location is not technically feasible in good faith, based on the assessment of an engineer licensed in the state, and shall provide a written summary of the basis for such determination.

ARTICLE V. EFFECT OF ADMINISTRATIVE APPROVAL/ADDITIONAL REQUIREMENTS

Sec. 24-37. - Effect of permit.

- (1) *In general.* Administrative approval of an application will be evidenced by the issuance of the applicable building permits. The issuance of a permit authorizes the permittee to:
 - (a) undertake the requested installation or collocation; and
 - (b) subject to applicable relocation requirements and the permittee's right to terminate at any time, operate and maintain the small wireless facilities and any associated vertical

support structure covered by the permit for an indefinite period so long as the installation or collocation is in compliance with the criteria set forth in Article III.

- (2) *No property right or other interest created.* A permit from the city authorizes an applicant or permittee to undertake only those certain activities specified in the approved application and its accompanying permits. Nothing in this Article or any permit issued under this Article shall be deemed to grant, convey, create or vest in the permittee a property right, real property interest, or grant any authority whatsoever to the applicant or permittee to impinge upon the rights of others who may already have an interest in the right-of-way area.

Sec. 24-38. - Additional requirements.

- (1) *Applicant's expense.* All costs incurred by an applicant or permittee in connection with its compliance with, or enjoyment of, this Article or any permit issued under this Chapter 24 shall be borne by the applicant or permittee and not by the city. In addition, prior to the issuance of a permit under this Chapter 24, the applicant or permittee shall reimburse the city for expenses, including engineering and specialized consulting, that the city deems necessary to facilitate its review of any application under this Chapter 24, subject to any limitations imposed by federal or state law.
- (2) *Non-interference.* No permittee may install, maintain, modify, operate, repair, or replace any small wireless facilities, or vertical support structures, in a manner that interferes with any existing infrastructure, equipment, or service including, but not limited to, infrastructure, equipment, or service used to provide communications, electric, gas, water, sewer, or public safety services.
- (3) *Duration.* Unless construction has actually begun and is diligently pursued to completion at that point, or unless a delay is caused by lack of commercial power or by the lack of communications transport 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 permittee, no permit for construction issued under this Chapter 24 shall be valid for a period longer than 12 months unless the public works director and permittee agree to a reasonable extension and all required fees are paid for the then-current term.
- (4) *Materials and claims.* All materials furnished for any work done in the right-of-way areas by any permittee shall be at the permittee's sole cost and expense. The permittee agrees to protect all permitted improvements installed in the right-of-way areas and the property of the city, and the city, from all claims of contractors, laborers, and suppliers.
- (5) *Obligations of permittee and wireless service provider.* An applicant or permittee need not own all components of a small wireless facility placed in the right-of-way areas and may permit its wireless service provider customers who will transmit or receive radio frequency emissions from the small wireless facility to maintain ownership of certain components of the small wireless facility or to provide wireless services through the small wireless facility. However, (i) all components of the small wireless facility must be wholly under the control and management of the permittee; and (ii) the permittee shall be liable for all acts or omissions, and all harms associated with the small wireless facility and all its components whether the same is its acts or omissions, or the acts or omissions of the owner of any components of the small wireless facility or provider of wireless services through the small wireless facility; (iii) the permittee acknowledges and agrees that no rights of ownership

by its customers shall permit any such customer to enter upon, or use the right-of-way areas, in any other manner or at any other place, including to add to, or modify or install any equipment at a small wireless facility location, which shall be the permittee's sole responsibility; and (iv) administrative approval under this Chapter 24 shall be required for the collocation of the small wireless facility components that are separate and apart from the original administrative approval granted to the permittee. Further, the permittee may not install any equipment it does not own at a small wireless facility location, unless the person for on whose behalf the equipment has been installed acknowledges and agrees, in a form acceptable to the city attorney, that the city has not granted it a franchise or consent to be in the right-of-way areas for any purpose; that it is bound by the permittee's representations; that it shall have no rights or claims against the city of any sort related to the small wireless facility; that its operations in the public rights-of-way and its equipment may be subject to taxes, fees or assessments as provided by applicable laws, and that the city may treat any equipment owned by such person as if it were owned by the permittee for all purposes (including, but not limited to, removal and relocation). The acknowledgment and agreement may be provided for all small wireless facilities within the city, and need not be provided separately, location by location.

- (6) *No waiver of other permits and authorizations.* All work upon the public rights-of-way of the city shall be in accordance with all applicable standards and applicable codes and shall be done under the general supervision of the department, or its designees. Nothing in this Article or any permit issued to an applicant hereunder shall be construed as: a waiver of any laws, regulations, or rules of the city or of the city's right to require the applicant to secure the appropriate permits or authorizations, or to pay the applicable fees associated with the same; or a waiver of the city's police powers.
- (7) *Treatment of equipment owned by other entities.* If wireless service providers own or operate equipment or provide wireless services at a permitted small wireless facility located in the public rights-of-way, each wireless service provider shall also be required to pay to the city the consent fee each year as required by S.C. Code 1976, § 58-9-2230. The purpose of this provision is to ensure that wireless service providers who use small wireless facilities constructed and owned by wireless infrastructure providers are not favored over those who do not. The permittee shall be obligated to pay such consent fee or any other tax, fee or assessment for any such equipment owned or operated by third parties unless that party agrees to pay such amounts owed directly to the city.
- (8) *Radio frequency emissions.* Without limiting the other provisions of this Article, any person operating a small wireless facility must cease its operations if it is not in compliance with FCC regulations governing radio frequency emissions (including but not limited to any standards that may be adopted in the future with respect to cumulative multi-point emissions), as the same may be amended from time to time, except to the extent that the FCC or other order, ruling or regulation permits it to continue to operate. The approval of an application for a small wireless facility is not intended to insulate the permittee from any claim or any remedy based on radio frequency emissions. Each permittee shall submit an annual report identifying applicable standards and the measured emissions from each small wireless facility sited under this Chapter 24. The report shall not be treated as confidential and shall be available to the public upon request.
- (9) *Right to access.* At all times, the city, its authorized officers, employees, agents or contractors, shall have the right to enter into and access all public rights-of-way at any time for the purpose of conducting city inspections, maintenance and repairs, including

permitting other parties to use the public rights-of-way to provide services. In conjunction with the above, the city may (i) inspect any public right-of-way and any approved wireless facility for compliance with the terms of Article III and this Article, (ii) make repairs, alterations or additions to any public right-of-way, and (iii) maintain or use any public right-of-way in any manner. Permittee agrees to cooperate, upon notification by the city, to comply with all requests to turn off the permitted wireless facility on a temporary basis to allow maintenance and repair of the public right-of-way.

- (10) *Future expansion.* To minimize disruption of public passage or infrastructure, to forestall or relieve overcrowding of the right-of-way area, or to protect historic property or environmentally sensitive areas, the department may require, as a condition of granting administrative approval for the placement of underground facilities or a new vertical structure, that the occupant place empty conduits for future expansion or collocation.

Sec. 24-39. - Inventory.

Each permittee shall maintain a current inventory of its permitted small wireless facilities and shall provide a copy of the inventory to the public works director by December 31st of each year for so long as permittee operates such facilities. The inventory shall include permittee's site identification number, the type of installation, the date of installation and/or decommissioning, the nearest street address or intersection, updated contact information, and the GIS or GPS coordinates for both inactive and active approved small wireless installations. If, after comparing the inventory to internal records, or by any other means, the city discovers the existence of any unauthorized small wireless facilities, the city shall provide written notice of such use to permittee and the city may, in its sole discretion, and upon 30 days' written notice, remove or require permittee to remove the unauthorized small wireless facility(ies) at the permittee's expense and without any liability to the city. Upon the city's exercise of authority to remove the small wireless facility(ies) under this section, the city will invoice the permittee and the permittee shall reimburse the city the city's cost of removal within 30 days of receipt of the invoice. In any such instance, the permittee shall restore the right-of-way area to its original condition prior to such installation at permittee's expense. For purposes of this section, any small wireless facility not listed in the inventory and for which administrative approval has not been granted shall be considered unauthorized. Notwithstanding the inventory requirement hereunder, when a permittee removes any small wireless facility permitted under this Chapter 24, such permittee shall notify the public works director, in writing, of such removal and shall update its inventory.

ARTICLE VI. OPERATIONS IN RIGHT-OF-WAY AREAS

Sec. 24-40. - General

- (1) *No interference with public safety.* A small wireless facility shall be operated and maintained in a manner that does not interfere with public safety uses including but not limited to, police, traffic control, utilities, fire and emergency services or public safety equipment.
- (2) *Compliance with law.* The owner, operator, or permittee of the small wireless facility, including any wireless service provider utilizing the small wireless facility, and the small wireless facility itself, shall upon its installation and for all periods thereafter, comply with all applicable law.

Sec. 24-41. - Work in the public rights-of-way.

- (1) *No physical interference; Damage to infrastructure.* No right-of-way or public place shall be obstructed longer than necessary during the permittee's work for the initial installation, construction, or maintenance of the wireless facility. Upon completion of the work, the right-of-way or public space shall be restored to the same condition existing before the commencement of the work. Permittee shall not damage any part of any right-of-way, or another public place of the city, including any public drain, sewer, catch basin, water pipe, pavement, or other public improvement. When any such damage should occur, the permittee shall repair the same as promptly as possible. In the event permittee fails to repair such damage within 30 calendar days after receipt of written notification from the city, in addition to charging a penalty in the amount of up to \$500.00, the city may make such repairs and charge the reasonable cost thereof to and collect the same from the permittee. In no event may wireless facilities be constructed or maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with applicable law protecting persons with disabilities.
- (2) *Closing of rights-of-way.* Nothing in this Article or any approved application shall be construed as a waiver or release of the rights of the city in and to the rights-of-way. In the event that all or part of the rights-of-way within the right-of-way areas are (i) closed to pedestrian and/or vehicular traffic and/or utilities; or (ii) vacated or abandoned or if ownership of the land in, under or over the affected rights-of-way is otherwise transferred to another person, all rights and privileges granted pursuant to this Article, any approved application, with respect to such rights-of-way, or any part of such rights-of-way so abandoned, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and the permittee for any facilities shall remove its facilities from such rights-of-way. Nothing herein is meant to preclude the permittee from pursuing any rights it may have under state law against a private person if the right-of-way is vacated for the benefit of that person. The city shall provide reasonable prior written notice to the permittee of any such closing, vacation, or transfer to allow it to remove its facilities.
- (3) *Construction and maintenance shall be done in a professional manner.* All work involved in the construction and maintenance of the wireless facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The permittee shall comply with applicable codes and industry standards, as amended from time to time. The permittee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. Also, the permittee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites and to comply with safety requirements of all permits, licenses, and other forms of approval or authorization. The permittee shall comply with city requirements for identification of the wireless facilities and for identification of employees, subcontractors, vehicles and equipment when performing work within the rights-of-way.
- (4) *Inspection by city.* The city shall have commercially reasonable access to inspect any work conducted by the permittee during the construction or maintenance of the facilities.
- (5) *Excavation notices.* The permittee must contact Palmetto Utility Protection Service (SC 811), or its successor association, and non-member utilities to comply with the requirements for excavation notification.

Sec. 24-42. – General maintenance.

- (1) *Standard.* The permittee shall maintain the facilities in a good condition and maintain a neat and orderly appearance in compliance with all applicable laws, codes, permits, and authorizations.
- (2) *Self-help.* The city may, from time-to-time, require the permittee to perform reasonable maintenance or conduct reasonable repairs to the wireless facility. If, within 30 days after written notice of such requirement to perform maintenance or repair, the city may undertake the requested maintenance and/or repairs and charge the permittee reasonable and documented cost of such maintenance or repairs.
- (3) *Payment of costs.* Any costs including expenses charged by the city to the permittee under any provision of this Article shall be paid within 30 days. The city may maintain an action to recover the costs of the repairs, including the payment of reasonable attorneys' and consultant fees, if not timely paid.
- (4) *Condition/failure to act.* The permittee shall keep the facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the city gives the permittee written notice of a failure by the permittee to maintain the facilities under this subsection (3), the permittee shall use its best efforts to remedy such failure within 48 hours after receipt of such written notice. If the permittee fails to perform its obligations hereunder, the city may perform the necessary work and charge the reasonable cost thereof to and collect the same from the permittee. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

Sec. 24-43. - Graffiti.

The permittee shall at all times keep and maintain the facilities free of all graffiti located thereon. If city notifies the permittee that graffiti is located anywhere on the wireless facility, the permittee shall remove the graffiti within 30 days of the written notice. If the permittee defaults in its obligations hereunder, the city may perform the necessary work and charge the reasonable cost thereof to and collect the same from the permittee. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

Sec. 24-44. - Tree maintenance.

The permittee, its contractors, and agents shall obtain written permission from the city parks and recreation department before trimming trees or other foliage interfering with the permittee's use of an approved wireless facility.

Sec. 25.45 - Emergency notification.

The permittee shall provide the public works director with a 24-hour emergency telephone number at which a representative of the permittee, not voice mail or a recording, responsible for the maintenance and operation of the wireless facility can be contacted in the event of an emergency. An emergency contact number of the permittee and all wireless service providers, if not permittee, transmitting radio frequency signals from the small wireless facility shall also be placed on the wireless facility. The permittee or any wireless service provider shall respond immediately to address a reported emergency.

Sec. 25.46 - Repair of damage to a right-of-way.

A permittee shall repair all damage to a right-of-way, or to any real property that is contiguous to such right-of-way, caused by the activities of the permittee or any third party utilizing the small wireless facility, while occupying, installing, repairing, or maintaining the small wireless facility, or vertical support structure. The permittee shall return the right-of-way or contiguous real property to its functional equivalence before said damage occurred. The permittee's obligations under this section 25.46 shall include the restoration or replacement of any damaged trees, shrubs or other vegetation and such repair, restoration and replacement shall be subject to the sole, reasonable approval of the public works director. In addition, the public works director may require the permittee to complete additional remedial measures necessary for public safety and the integrity of the public right-of-way, in such director's sole discretion. If the permittee does not repair such public right-of-way and/or contiguous real property or perform such work as described in this section within 30 calendar days of written notice from the city, then the city shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of the permittee and to charge the permittee for the reasonable and actual costs incurred by the city in addition to charging a fine in an amount of up to \$500.00. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.

Sec. 24-47. - Removal, relocation or modification of a small wireless facility in the ROW.

- (1) *Notice.* Within 90 days following written notice from the city, a permittee, 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 facilities within the rights-of-way whenever the city, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary, such as, but not limited to:
 - (a) 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) To ensure that any wireless facility or vertical support structure to which they are attached or located on or within do not interfere with the use of the rights-of-way by the public, or present a risk to public health or safety;
 - (c) If the city is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the facilities from the rights-of-way;
 - (d) If permittee's license to operate the facilities and/or provide wireless services are terminated, revoked, expired, or otherwise abandoned; or
 - (e) If permittee's operations of the wireless facilities cause signal interference as per section 25-49, below.
- (2) *Emergency removal or relocation of facilities.* The city retains the right to move any wireless facilities 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 permittee and provide it the opportunity to move or remove its facilities. If the city determines that a permittee's activity in a right-of-way area pursuant to this Chapter 24 creates an imminent risk to public

safety, the city may provide written notice to the permittee and demand that the wireless provider address such risk. If the permittee fails to reasonably address the risk within 24 hours of the written notice, the city may take or cause to be taken action to reasonably address such risk and charge the permittee the reasonable documented cost of such actions.

- (3) *Undergrounding.* If a permit for a wireless facility allows collocation on a utility pole that is aboveground in any right-of-way and the distribution lines of the incumbent local exchange carrier or electric utility are subsequently required to be placed underground and the vertical support structure removed, the permit for such wireless facility shall be deemed withdrawn and such wireless facility must be removed.
- (4) *Preservation of city's rights.* The rights and privileges granted in this Article or any approved application shall not be in preference or hindrance to the right of the city, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. If, in the reasonable exercise of police powers, the city requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of vertical support structures or small wireless facilities as a result of a public project, a permittee shall relocate the vertical support structure or small wireless facility that such permittee has installed in the right-of-way area at no cost to the city when the city determines that such vertical support structure reasonably interferes with the widening, repair, reconstruction, or relocation project or the public project. The permittee's work under this section shall take place (i) immediately if emergency circumstances exist or (ii) otherwise, within 90 days of notice of such interference.
- (5) *Payment for repair/replacement of damaged property.* To the extent that any wireless vertical support structure is damaged or destroyed by a third party, notwithstanding any agreement the city may have with the owner of such wireless vertical support structure, to the extent that a permittee is using such wireless vertical support structure, for the placement of a small wireless facility, the city shall have no obligation to pay for the repair or replacement of the utility pole, vertical support structure, or decorative pole.

Sec. 24-48. – Decommissioning and abandonment of facilities.

- (1) *Decommissioning.* A permittee of a small wireless facility shall notify the department, in writing as soon as practicable, but no later than 30 days before it decommissions a small wireless facility, of its intent to decommission the facility. In such an instance, the permittee shall be required to remove all or any portion of the small wireless facility if the city determines that such removal is in the best interest of the public safety and public welfare. If the permittee fails to remove the decommissioned facility within 90 days after receiving written notice from the city of such requirement, the city may undertake to do so and recover the actual and reasonable expenses of doing so from the permittee, its successors or assigns, plus a penalty of up to \$500.00. The permittee shall remit payment for such amounts within 30 days of its receipt of an invoice therefor.
- (2) *Abandonment by continued inactivity.* Any small wireless facility permitted under this Chapter 24 that is not operated for a continuous period of 6 months shall be considered abandoned, whether or not the permittee of the small wireless facility intends to make use of it or any part of it. The permittee of such abandoned facility shall be under a duty to

remove such abandoned facility within 60 days of receipt of notice from the city of such abandonment. When the permittee fails to act hereunder, the city may remove such abandoned facility and/or pursue all legal remedies available to it to ensure that such abandoned facility is removed. The city may seek to have the telecommunications facility removed regardless of the owner's or operator's intent to operate the telecommunications tower or antenna and regardless of any permits, federal, state or otherwise, which may have been granted. As used in this subsection (1), the word "operate" means used in a manner that is consistent with the current permitted use granted.

- (3) *Abandonment by inaction.* At any point when a permittee fails to pay any required fee or annual payment to the city and fails to respond within 30 days to a written inquiry from the city as to whether the permittee intends to continue to operate a facility, for whatever reason, the facilities shall be deemed abandoned and the city may require the permittee, at the city's sole discretion, to remove the facilities within 30 days.
- (4) *Resumption of operations.* If the owner of an abandoned telecommunications facility wishes to resume use of such abandoned facility, in the discretion of the department, the owner may be required to apply for and receive all applicable permits and meet all of the conditions of this ordinance as if such telecommunications facility was a new facility.
- (5) *Failure to act.* If the permittee for a facility defaults in its obligations hereunder to remove the facilities, the city may remove or relocate the facilities and charge the reasonable cost thereof to and collect the same from the permittee for the removed facilities. The city shall also be entitled to recover any reasonable legal and/or consultant fees it may incur in enforcing the provisions of this Article from the permittee.

Sec. 24-49. - Signal interference prohibited.

- (1) *Signal interference.* Permittee shall not cause, permit or allow the installation, operation, maintenance, or use of any small wireless facility sited under this Chapter to interfere with any traffic signal system, utility system, public safety radio system, or other city communications infrastructure operating on spectrum where the city is legally authorized to operate.
 - (a) *Notice; applicant response.* In the event any small wireless facility interferes with the items set forth in section 25-49, and upon notice of the same from the city, the permittee shall immediately power down the interfering equipment, except for intermittent testing to determine the cause of such interference, until the interference has been resolved.
 - (b) *Removal; relocation.* In the event interference with city facilities cannot be eliminated, permittee shall remove or relocate any small wireless facility that is the source of the interference to a suitable alternative location as set forth in section 25-47.
- (2) *Emergencies.* In case of an emergency due to physical or signal interference, or any unforeseen events, in the city's sole discretion, the city will immediately act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Chapter. In any such event, the city will use the "Emergency Contacts" provided to the city pursuant to section 25-45 and will take every reasonable effort to coordinate its emergency response with the permittee. Permittee shall install a master "cut-off" switch on each wireless facility for the purpose of assisting the

city in such an emergency, and the Parties shall meet after the city determines that an emergency situation has ended to establish the time and manner in which power shall be restored to such wireless facility.

ARTICLE VII. INDEMNIFICATION, INSURANCE, BONDS

Sec. 24-50. - Indemnification and insurance.

- (1) *Indemnification.* Any permittee, as a condition of the approval of any application under this Article, agrees to indemnify, defend, protect, and hold harmless the city, its elected officials, council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable consultant and/or attorney's fees and costs of defense (collectively, the "claims") directly or proximately resulting from the activities or operations of the permittee's or any wireless service provider providing wireless services at any permitted location undertaken pursuant to any approved application.
- (2) *Waiver of claims.* Any permittee, or any wireless service provider providing wireless services at the permitted location, as a condition of the approval of any application under this Article, waives any and all claims, demands, causes of action, and rights it may assert against the city on account of any loss, damage, or injury to any permittee or wireless service provider equipment or any loss or degradation of the wireless services provided by permittee or any wireless service provider providing wireless services at any permitted location in the right-of-way areas as a result of any event or occurrence regardless of the cause.
- (3) *Insurance.* Any permittee, as a condition of the approval of any application under this Article, shall obtain and maintain at all times during the duration of that period of time that it operates in the right-of-way areas pursuant to such approved application, commercial general liability and property liability insurance in amounts and with those requirements published with the application requirements referenced in section 25-25. The city will have the authority to amend the insurance requirements, in its reasonable view, to conform to industry standards.
- (4) *Filing of certificates and endorsements.* Prior to the commencement of any work pursuant to any approved application, and annually on the anniversary of the approved application thereafter, the permittee and all parties acting for or on behalf of the permittee shall file with the city the required original certificate(s) of insurance with endorsements, which shall state the following: 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; and that the city shall receive 30 days' prior notice of cancellation; that the 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; and that the permittee's commercial general liability insurance policy waives any right of recovery the insurance company may have against the city. The certificate(s) of insurance with endorsements and notices shall initially be filed with the application, and future certificate(s) of insurance with endorsements shall be mailed to the city at the following address: Risk Management, 1018 Second Ave. S., North Myrtle

Beach, South Carolina 29582. Neither a failure to provide the required certificate(s) of insurance nor submission of a certificate(s) of insurance not in conformance with the insurance requirements stated herein shall relieve the permittee from the obligation to have in force the required insurance coverages. The insurance requirements stated herein may only be changed by specific written agreement by the city.