

ORDINANCE NO. 49-2018

INTRODUCED BY: Council as a Whole and Mayor James Graven

AN ORDINANCE ENACTING CHAPTER 1032 OF THE CODIFIED ORDINANCES OF THE CITY OF OLMSTED FALLS, ENTITLED “RIGHT OF WAY ADMINISTRATION,” AS FURTHER DESCRIBED IN THE ATTACHED EXHIBIT “A”, AND DECLARING AN EMERGENCY

WHEREAS, the General Assembly of Ohio has adopted HB 478 effective July 31, 2018, modifying ORC Chapter 4939, concerning wireless service and the placement of small cell facilities in municipal rights-of-way, which legislation provides home rule authority to charter municipalities to manage access to, and occupancy of, rights-of-ways to the extent necessary to matters of local concern; and

WHEREAS, it is the desire of the Administration and the Council of the City of Olmsted Falls that Chapter 1032 be enacted entitled Right of Way Administration, to include provisions for small cell facilities and wireless support structures in the City’s right-of-way, in accordance with the City’s home rule authority to protect its health, safety and welfare, as further described in the attached Exhibit “A.” Now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLMSTED FALLS, CUYAHOGA COUNTY, OHIO, THAT:

SECTION 1. That Chapter 1032 entitled Right of Way Administration, of the Codified Ordinances of the City of Olmsted Falls be enacted as further described in the attached Exhibit “A.”

SECTION 2. A copy of this Ordinance and the attached Exhibit “A” will be forwarded to the Public Utilities Commission Office pursuant to law.

SECTION 3. Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4. This Ordinance is hereby declared to be an emergency measure for the immediate preservation of the health, safety and welfare of the residents of the City of Olmsted Falls for the further reason that it is anticipated that the wireless communications industry will be submitting application for our rights-of-way use immediately upon the effective date of HB 478. Therefore, this Ordinance shall take effect immediately upon the affirmative vote of not less than

CHAPTER 1032
Rights of Way Administration

- 1032.01** Scope of chapter; definitions.
- 1032.02** Application for approval to occupy or use the public right-of- way.
- 1032.03** General public right-of-way use regulations.
- 1032.04** Location, relocation and removal of facilities.
- 1032.05** Notice of routine maintenance, emergency work, new service orders, or capital improvements.
- 1032.06** Construction permit and standards.
- 1032.07** Recovery of City costs in managing the public right-of-way.
- 1032.08** City waiver.
- 1032.09** Right of appeal.
- 1032.10** Remedies.

**Supplemental Rights of Way Administration for
Small Cell Facilities and Wireless Support Structures**

- 1032.11** Purpose and Intent.
- 1032.12** Applicability.
- 1032.13** Definitions.
- 1032.14** Application Required.
- 1032.15** Application Review Timeframe and Process.
- 1032.16** Small Cell Design Guidelines.
- 1032.17** Standard Conditions of Permit Approval.
- 1032.18** Safety Requirements.
- 1032.19** Recovery of Costs.
- 1032.20** Severability.

1032.01 SCOPE OF CHAPTER; DEFINITIONS.

(a) The purpose and intent of this Chapter is to:

- (1) Manage Occupancy or Use of the Public Right-of-Way.
- (2) Encourage the provision of advanced, competitive utility and telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;
- (3) Permit and manage reasonable access to the Public Right-of-Way of the City for utility and telecommunications service purposes on a competitively neutral basis.
- (4) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the City for the benefit of the public.
- (5) Assure that the City receives cost recovery for the Occupancy and Use of the Public Right-of-Way in accordance with law.
- (6) Assure that all Service Providers with Facilities in the Public Right-of-Way comply with the ordinances, rules and regulations of the City.
- (7) Assure that the City fairly and responsibly protects the public health, safety and welfare.
- (8) Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

(b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) Affiliate means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(2) Cable Operator means a person providing or offering to provide Cable Service within the City.

(3) Cable Service means "cable service, as defined in the Cable Communications Policy Act of 1984, codified at 47 U.S.C. §532, et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as each might be further amended.

(4) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including construction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or routine maintenance.

(5) City means the City of Olmsted Falls Safety-Service Director or his designee.

(6) Emergency means an unforeseen occurrence or condition calling for immediate action.

(7) Facilities or Facility means the plant, equipment and property, including but not limited to, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the City and used or to be used to operate a System to transmit, receive, distribute, provide or offer a Service but also including private system.

(8) New Service Orders means the connection from the Public Service Provider's existing Facilities on private property for the purpose of providing a new Service to a customer in the City.

(9) Overhead Facilities means utility poles and wires, cables and other such equipment running between and on such poles, including the underground supports and foundations for such Facilities.

(10) Private Facility means the plant, equipment and property, including but not limited to, cables, fiber optics, wires, pipes, conduits, ducts, pedestals, antennae, electronics and other appurtenances or Facilities used or to be used to operate a system to transmit, receive, distribute

or provide telecommunications or other services between or among private buildings or facilities where there is no offer of service to the public.

(11) Private Service Provider means any entity who, pursuant to the approval to Occupy or Use the Public Right-of-Way pursuant to Section 1032.02 of this Chapter, directly or indirectly owns, controls, operates or manages Private Facilities within the City's Public Right-of-Way used or to be used for the purpose of operating a System to transmit, receive, distribute or provide telecommunications or other services between or among private buildings or facilities where there is no offer of Service to the public.

(12) Public Easement means any easement under the jurisdiction and control of the City and acquired, established, dedicated or devoted for public purposes, including utility purposes.

(13) Public Right-of-Way means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, Public Easement and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City but excludes a private easement.

(14) Public Service Provider means any entity that, pursuant to the approval to Occupy or Use the Public Right-of-Way pursuant to Section 1032.02 of this Chapter, directly or indirectly owns, controls, operates or manages Facilities within the City's Public Right-of-Way, used or to be used for the purpose of operating a System offering Service to the public within the City or outside of the City's boundaries.

(15) Service means the offering of water, sewer, electric, gas, telephone, telecommunications, cable television, information or other utility-like service for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the Facilities used.

(16) Service Provider means any Public Service Provider and/or Private Service Provider.

(17) System means a network of Facilities for the transmission and/or distribution of a Service.

1032.02 APPLICATION FOR APPROVAL TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Application Required for Approval to Occupy or Use Public Right-of-Way.

(1) The following Service Providers shall apply to the City and secure the review of the Planning & Zoning Commission in accordance with City Charter Article X, Section 10.06, in order to occupy or use the Public Right-of-Way who:

A. Does not currently have an existing System or Facilities in the City's public Right-of-Way and desires to construct a System, Facilities or Private Facilities in the Public Right-of-Way;

B. Has an existing System, Facilities or Private Facilities in the Public Right-of-Way on the effective date of this Chapter but is planning a Capital Improvement to existing Facilities or to construct any additional Facilities anywhere in the City.

(2) The application for approval to occupy or use the Public Right-of-Way shall include the following information with respect to the applicant Service Provider's planned or existing System and/or Facilities in the Public Right- of-Way as well as plans or any planned Capital Improvements anticipated to occur within the succeeding twelve (12) month period:

A. The identity and federal tax identification number of the applicant, and the name, address and business and emergency telephone numbers of the responsive officer, agent or employee of the applicant.

B. A general description of the Services to be provided by the applicant Service Provider over its System or Facilities.

C. A description of the type of transmission medium to be used by the applicant Service Provider to operate a System.

D. A description of the proposed Facilities in the City's Public Right- of-Way, all in sufficient detail to identify:

1. The location and route of the applicant Service Provider's proposed Facilities.

2. The location of all known existing Overhead and/or Underground Facilities in the Public Right-of-Way along proposed route of the applicant Service Provider's proposed Facilities that is sufficient to show the impact of the applicant's Facilities on other existing Facilities.

3. The location of all known overhead and underground utility easements affected by the services to be provided.

E. A preliminary construction schedule and completion date for all pending or anticipated Capital Improvements to occur within the succeeding twelve (12) month period.

F. If the applicant Service Provider is providing Services in the City:

1. A description of the access and line extension policies or a copy of their PUCO tariff.

2. The area or areas of the City in which the applicant Service Provider is currently providing Service and a schedule for build-out of the entire area addressed by the permit, if applicable.

G. Evidence that the applicant Service Provider has complied, or will comply, with indemnification, insurance, performance bond and construction bond requirements of this Chapter.

H. Information sufficient to determine that the applicant Service Provider has received any certificate of authority required by the PUCO to operate a System and provide Services in the City.

I. Such other and further information as may reasonably relate to the applicant Service Provider's planned or existing System and/or Facilities in the Public Right-of-Way as well as plans or any planned Capital Improvements anticipated to occur within the succeeding twelve (12) month period.

(3) Upon receipt of an application by a Service Provider for approval to occupy or use the Public Right-of-Way, the City shall forthwith refer the application to its Police Department for review and determination of the impact of the proposed Facilities or System on the pedestrian and traffic safety, and schedule a hearing on the Service Provider's application for approval on the agenda of the Planning & Zoning Commission, so that the matter is heard within forty-five (45) days of the date on which the application was filed with the City.

(4) Within fifteen (15) days of said hearing the Planning & Zoning Commission shall issue its findings and report as follows:

A. To determine compliance of this code section by the Service Provider through its application to occupy or use the Public Right-of-Way based on whether the Service Provider possesses the financial, technical and managerial resources necessary to protect the public health, safety and welfare, or based upon the report of the Police Department concerning pedestrian or safety factors, for other reasons based on the health, safety and welfare of the City and in accordance with Ohio law or applicable regulation.

1. If the Planning & Zoning Commission determines non-compliance by a Service Provider in its application to occupy or use the Public Right-of-Way, the Planning & Zoning Commission shall provide its reasons in writing for its determination of non-compliance, and shall identify any additional information necessary in order for the Service Provider to demonstrate compliance with the provisions of this code section and to occupy or use the Public Right-of-Way.

B. If the Planning & Zoning Commission determines compliance of the provisions of this code section through the application of a Service Provider to occupy or use the Public Right-of-Way, the City shall provide the Service Provider with a Right-of-Way occupancy permit which shall set forth the specific terms and conditions of its occupancy and use.

(5) Each Service Provider submitting an application for approval to occupy or use the Public Right-of-Way shall pay a fee to reimburse the City for its actual administrative costs related to the application as provided in Section 1032.07. A Service Provider may exercise its right of review of such fee as provided by PUCO regulation.

(b) Application to Existing Franchise Ordinances, Agreements, or Operation Under a PUCO Tariff. For purposes of this Chapter, any Service Provider who operates under either a franchise ordinance, written agreement, or PUCO tariff, shall be deemed to be in compliance with a Service Provider's occupancy or use of the Public Right-of-Way to the extent described in the agreement, franchise ordinance, or PUCO tariff. The Service Provider's use of the Public Right-of-Way beyond that authorized by the agreement, franchise ordinance, or PUCO tariff shall require compliance under this section for such additional occupancy or use. Service Providers shall comply with the registration provisions and construction standards to the extent that the provisions of this Chapter do not directly conflict with the agreement, franchise ordinance, or PUCO tariff. If there is a direct conflict between an agreement, franchise ordinance, or PUCO tariff in effect prior to the adoption of the provisions of this Chapter, the agreement, franchise ordinance, or PUCO tariff shall control.

(c) Service Provider Insurance. As a condition of the approval to occupy or use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service Provider and the City, and its elected and appointed officers, officials, agents, employees and representatives as additional insureds:

(1) Comprehensive general liability insurance with limits not less than

A. Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;

B. Five million dollars (\$ 5,000,000) for property damage resulting from any one accident;
and

C. Five million dollars (\$5,000,000) for all other types of liability.

(2) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is occupying or using the Public Right-of-Way, or is engaged in the removal of its Facilities, with proof thereof furnished to the City. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew."

(3) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Service Provider shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

(4) Upon written application to, and written approval by, the City, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section; however, a public utility subject to jurisdiction of the PUCO and operating under its tariff that has established a self-insurance fund that complies with the laws and regulations of the State of Ohio shall satisfy this requirement by simply providing information to the City relating to such self-insurance fund and the appropriate contact point for matters relating to that fund.

(d) General Indemnification. Each application for approval to occupy or use the Public Right-of-Way, and each annual registration, shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the City and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against third party claims (including all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense), arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors or subcontractors (for the construction, installation, operation, maintenance, repair or removal of its System or Facilities, and in providing or offering Services over the Facilities or System), whether such acts or omissions are authorized, allowed or prohibited by this Chapter or in accordance with federal and/or state regulation.

1032.03 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Approval granted to a Service Provider to occupy or use the Public Right-of-Way under Section 1032.02 shall be limited to a grant to occupy or use the specific Public Right-of-Way as defined within the Service Provider's application, including the specific Facilities and location along the Public Right-of-Way.

(b) Nonexclusive Approval to Occupy the Public Right-of-Way. No approval granted under Section 1032.02 shall confer any exclusive right, privilege, license or franchise to occupy or use the Public Right-of-Way of the City to operate a System for delivery of Services or any other purposes.

(c) Rights Permitted. No approval granted under Section 1032.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed an approval only to occupy or use the Public Right-of-Way for the limited purposes granted by the approval.

(d) Nondiscrimination. In accordance with federal and/or state regulation, a Public Service Provider providing Service to the public in the City shall make its Services available to any customer within the designated service area who shall request such Service, without discrimination as to the terms, conditions, rates or charges for the Public Service Provider's Services.

(e) Maintenance of Facilities. Each Service Provider shall maintain its System or Facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

(f) Safety Procedures. A Service Provider or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as necessary and in accordance with applicable state and local requirements for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such Public Right-of-Way or property.

(g) Interference with the Public Rights-of-Way. No Service Provider may locate or maintain its Facilities so as to unreasonably interfere with the use of the Public Right-of-Way by the City, by the general public or by other persons authorized to use or be present in or upon the Public Right-of-Way. All such Facilities shall be moved by the Service Provider, temporarily or permanently, as determined by the City.

(h) Damage to Public and Private Property. No Service Provider nor any person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any City Property, Public Right-of-Way, Other Ways or other public or private property located in, on or adjacent thereto.

(i) Restoration of Public Right-of-Way, Other Ways and City Property.

(1) When a Service Provider, or any person acting on its behalf, does any work in or affecting any Public Right-of-Way, other ways or City property, it shall, after the work is completed and at its own expense, promptly remove any obstructions there from and restore such ways or property, within ten (10) days, or upon a reasonable time thereafter as agreed upon with the City, to as good a condition as existed before the work was undertaken.

(2) If weather or other conditions do not permit the complete restoration required by this section, the Service Provider shall temporarily restore the affected ways or property, as directed by the City. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(j) Duty to Provide Information.

(1) Within ten (10) days of a written request from the City each Service Provider shall furnish the City with documentation sufficient to show that the Service Provider has complied with all requirements of this Chapter.

(2) In addition, within ten (10) days of a written request from the City, each Service Provider shall make available for inspection by the City at reasonable times all books, records, maps and other documents, maintained by the Service Provider with respect to its Facilities in the Public Right-of- Way.

(k) Assignments or Transfers of Approval. Approval to occupy or use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without approval of the City, so long as:

(1) The City is notified of the proposed transfer on or before the date of transfer; and

(2) The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:

A. All information required by the application for approval to occupy or use the Public Right-of-Way pursuant to Section 1032.02 of this Chapter; and

B. Any other information reasonably required by the City.

(3) This section shall not apply to public utilities operating under a tariff issued by the State of Ohio and regulated by the PUCO where such activities are regulated by the State of Ohio or federal agencies and such public utility shall only be required to notify the City when such transfer has been approved by a regulatory body.

(l) Revocation of Approval. Approval granted by the City to Occupy or Use the Public Right-of-Way of the City may be revoked for any one of the following reasons not inconsistent with the franchise ordinance, agreement or PUCO tariff under which the Service Provider operates:

(1) Construction, installation, location, operation or Excavation at an unauthorized location.

(2) Construction, installation, location, operation or Excavation in violation of Construction requirements or safety standards.

(3) Failure to restore the Public Right-of-Way, as required by this Chapter.

(4) Failure to pay fees, costs, taxes or compensation when and as due the City.

(m) Notice and Duty to Cure. In the event that the City believes that grounds exist for revocation of approval to occupy or use the Public Right-of-Way or construction permit, he shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) That rebuts the alleged violation or noncompliance; and/or

(3) That it would be in the public interest to impose some penalty or sanction less than revocation.

1032.04 LOCATION, RELOCATION AND REMOVAL OF FACILITIES.

(a) Location of Facilities. All Facilities shall be constructed, installed and located in accordance with the following terms and conditions:

(1) Facilities shall be installed within an existing compatible underground duct or conduit whenever excess capacity exists within such Facility.

(2) A Service Provider with permission to install Overhead Facilities shall install its Facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(3) Whenever the existing electric, cable, telecommunications and other similar Facilities are located underground in a Public Right-of-Way, a Service Provider with permission to occupy the same Public Right-of-Way with the electric, cable, telecommunications or other similar Facilities, must also locate its Facilities underground to the extent technologically feasible.

(4) Except for Overhead Facilities as provided herein, no Facilities shall be located above ground in a Public Right-of-Way without the express written permission of the City.

(b) Above Ground Facility Location Protocol.

(1) Any Facility located or to be located above, including any doors, shall maintain an unobstructed sidewalk width of five (5) feet to provide for unimpeded pedestrian and wheelchair passage, except where the existing sidewalk width is less than six (6) feet, and a minimum of two (2) feet unobstructed distance from the perimeter of the above ground Facility to the roadway curb face and to the closest edge of the public sidewalk.

(2) No above ground Facility shall create a safety hazard by being installed:

A. Within five (5) feet of any fire hydrant;

B. Within five (5) feet of any driveway;

C. Where there is no bus shelter at a bus stop, within forty (40) feet back of a sign identifying a particular bus company or bus route and marking a designated bus stop;

D. Where there is a bus shelter at a bus stop, within five (5) feet forward and forty (40) feet back of the end of the shelter identified as serving a particular bus company or bus route and marking a designated bus stop;

E. Within three (3) feet of any traffic sign;

F. Within three (3) feet of any public utility pole, provided that all or a portion of an above ground Facility may be placed on a public utility pole as part of an approved above ground Facility construction permit and in accordance with other applicable laws and regulations for the placement of Facilities on utility poles; and placement adjacent to a public utility pole shall be limited to one side of the pole;

G. Within an area designated for handicapped parking, a taxi stand or a commercial loading or unloading zone; or

H. Immediately in front of buildings, houses, structures, or public stairs such that it causes a violation of ADA guidelines for pedestrian passage between private property and the Public Rights- of-Way.

(c) Excess Capacity. To reduce excavation in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of underground conduit as well as to construct, whenever possible, excess conduit capacity for occupancy of future Facilities in the Public Right-of-Way. Therefore, if a Service Provider is constructing underground conduit in the Public Right-of-Way for its own Facilities, and such construction is in an area in which other Service Providers would likely construct Facilities in the future, the City may request the Service Provider to construct the conduit in the Public Right-of-Way with excess capacity in the Public Right-of-Way,

subject to existing contracts and/or legal requirements concerning existing third party Service Providers.

(d) Relocation or Removal of Facilities. Within thirty (30) days following written notice from the City, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Facilities in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary, or warranted as follows:

(1) The construction, repair, maintenance or installation of any City or other public improvement in or upon the Public Right-of-Way.

(2) The operations of the City or other governmental entity in or upon the Public Right-of-Way.

(3) The Service Provider's approval to occupy or was revoked, abandoned, or the System or Facility was constructed without the prior approval of the City.

(4) With regard to the expense of such removal or relocation, the standard for reimbursement to the service provider for such expense shall be in accordance with state law and regulations of the Public Utilities Commission of Ohio.

1032.05 NOTICE OF ROUTINE MAINTENANCE, EMERGENCY WORK, NEW SERVICE ORDERS, OR CAPITAL IMPROVEMENTS.

(a) Notice of Work. Except in case of emergency, as provided in Section 1032.05(c), or for routine maintenance as provided in Section 1032.05(b), no Service Provider, or any person acting on the Service Provider's behalf, shall commence any work on a new service order or Capital Improvement in the Public Right-of-Way of the City or other ways without obtaining a construction permit pursuant to Section 1032.06, if required, and obtaining approval to occupy or use the Public Right-of-Way pursuant to Section 1032.02, if required, and providing twenty-four (24) hours advance notice to the City.

(b) Routine Maintenance, New Service Orders, and Capital Improvements.

(1) A Service Provider need not obtain a construction permit or notify the City prior to or after commencing any routine maintenance, new service orders or Capital Improvements that do not include the construction in, or excavation of, a Public Right-of-Way or closing of a public street.

(2) For routine maintenance, new service orders and Capital Improvements that require the Service Provider to cause the construction in, or excavation of, a Public Right-of-Way or closing of a public street or any lane obstruction in a public street, the Service Provider shall notify the City within twenty- four (24) hours in advance of commencing the routine maintenance, new service order or Capital Improvements, and shall meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable ODOT regulations.

(c) Emergency Work. In the event of the need for any unexpected repair or emergency work, a Service Provider may commence such emergency response work as required under the circumstances, provided that for emergency work that requires excavation of a Public Right-of-Way or lane obstruction or closing of a public street, the Service Provider shall notify the City as promptly as possible before commencing such emergency work, or as soon as possible thereafter if advance notice is not practicable.

1032.06 CONSTRUCTION PERMIT AND STANDARDS.

(a) Construction Permit.

(1) Compliance with the provisions of Section 1032.02 and Section 1032.03, where applicable, is required prior to the issuance of a construction permit.

(2) No construction, installation, maintenance or repair of Facilities or excavation in the Public Right-of-Way which disrupts the flow of traffic by causing a lane obstruction or closing of a public street shall commence or continue without obtaining a construction permit from the Building Commissioner as provided in this section.

(3) No construction permit is required for routine maintenance and new service orders that do not include excavation in a public street.

(4) No construction permit is required for any type of emergency work.

(b) Construction Permit Applications. Applications for permits to construct, or install Facilities, or excavate, shall be submitted upon forms provided by the City, and issued within ten (10) business days, upon the presentation of the following information, if applicable, and be accompanied by drawings, plans and specifications in sufficient detail to demonstrate the following:

(1) A preliminary construction schedule.

(2) That the Facilities will be constructed, installed, maintained or repaired, or the Public Right-of-Way excavated, in accordance with all applicable codes, rules and regulations.

(3) If the applicant is proposing to construct, install, maintain, repair or locate Facilities above ground, the location and route of all Facilities to be located or installed upon existing utility poles.

(4) If the applicant is proposing an underground installation of new Facilities in new ducts or conduits to be constructed in the Public Right-of-Way, the specific location, including the horizontal and exact vertical depth location, and route of all Facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are in the Public Right-of-Way. Included with the installation shall be magnetic and florescent tape placed at a minimum of one foot to a maximum of two (2) feet above the entire Facility as installed for the purpose of locating the Facility during future construction activities or other such location device as approved by the City. The tape shall be marked with the type of Facility installed as approved by the City.

(5) The specific location, including the horizontal and exact vertical depth location, of all known existing underground utilities, conduits, ducts, pipes, mains and installations that are in the Public Right-of-Way along the underground route proposed by the applicant.

(6) The location(s), if any, for interconnection with the Facilities of other Service Providers.

(7) The construction methods to be employed for protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.

(8) The structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(9) The impact of construction, installation, maintenance or repair of Facilities on trees in or adjacent to the Public Right-of-Way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during construction.

(10) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the Facilities and to offer or provide the Services.

(c) Construction Codes and Plans. Facilities shall be constructed, installed, repaired, operated, excavated and maintained in accordance with all applicable federal, state and local codes, rules,

regulations and technical codes and plans including, but not limited to, the National Electrical Safety Code and ODOT's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations.

(d) Record Drawings. Within sixty (60) days after completion of construction, the Service Provider shall furnish the City with three (3) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all Facilities constructed pursuant to the permit. At such time, the Service Provider shall submit the record drawings in a digital format compatible with the City's current computer software.

(e) Restoration of Improvements and Landscape. Upon completion of any construction work, the Service Provider shall promptly repair any and all Public Rights-of-Way and provide property improvements, fixtures, structures, Facilities, landscaping, and trees which were damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.

(f) Landscape Buffering. The Service Provider shall provide landscape buffering around any new Facilities which are constructed or installed in the Public Right-of-Way, according to the directives of the Planning Commission, after consideration of the traffic, pedestrian, and safety measures recommended by the City police department, pursuant to the mandatory referral provisions contained in Article X, Section 10.06 of the City Charter.

(g) Construction and Completion Bond. Prior to issuance of a construction permit the Service Provider shall provide the City with a construction bond written by a corporate surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of constructing, installing or repairing the Service Provider's Facilities or excavation in the Public Right-of-Way of the City, or such lesser amount as the City may determine to adequately protect the City's interest. The construction bond shall be deposited with the City prior to commencing construction.

(1) The construction bond shall remain in force until eighteen (18) months after substantial completion of the work, as determined by the City, including restoration of Public Right-of-Way and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the City:

- A. Timely completion of construction;
- B. Construction in compliance with applicable plans, permits, technical codes and standards;
- C. Proper location of the Facilities as specified by the City;
- D. Restoration of the Public Right-of-Way and other property affected by the construction;
- E. The submission of record drawings, in both written and digital format, after completion of the work as required by this Chapter; and
- F. Timely payment and satisfaction of all claims, demands or liens for labor, material or services, provided in connection with the work.

(3) In lieu of filing a construction bond with the City for each construction permit, a Service Provider with the approval of the City may file an annual construction bond (or annual bond) in the form described above in an amount that the City may determine will adequately protect the City's interests as described above.

(4) Public utilities operating under a tariff issued by the State of Ohio and regulated by the Public Utilities Commission of Ohio shall be exempt from any construction bond requirements and shall be required only to notify the City of the appropriate contact person for claims regarding construction activities in accordance with their self-insurance program as established pursuant to

state law and regulations. All public way fees and costs recoveries provided for hereunder shall be consistent with Ohio R.C. 4939.05, PUCO Regulations and Decisions of the Public Utilities Commission of Ohio which require that such costs be prorated over all users of the right-of-way including users that are governmental entities, including, but not limited to, the City itself.

1032.07 RECOVERY OF CITY COSTS IN MANAGING THE PUBLIC RIGHT-OF-WAY.

(a) Purpose. It is the purpose of this Section 1032.07 to provide for the recovery of all direct and indirect costs and expenses actually incurred by the City and associated with a Public or Private Service Provider's occupancy or use of the Public Right-of-Way and related to the enforcement and administration of this Chapter. All fees related to the occupancy or use of the Public Right-of-Way shall be assessed in a manner to be determined by the City.

(b) Fee Determination Criteria. The fee shall be based only on costs that the City both has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of the Public Right-of-Way. Such costs shall be reasonably and competitively neutrally allocated among all Service Providers occupying or using the Public Right-of-Way owned or controlled by the City. Consistent with Ohio R.C. 4939.06, if a Service Provider does not accept a fee levied against it, the Service Provider may appeal the fee to the PUCO within thirty (30) days after the fee is actually assessed.

(c) Regulatory Fees and Compensation Not a Tax. The regulatory fees and costs provided for in this Chapter are separate from, and additional to, any and all federal, state, local and City taxes as may be levied, imposed or due from a Service Provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Services.

1032.08 CITY WAIVER.

It is within the City's reasonable discretion to waive a portion or portions of this Chapter where such requirements, in the City's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.

1032.09 RIGHT OF APPEAL.

Any Service Provider aggrieved by a decision of the City may appeal such decision within thirty (30) days of receipt thereof to the Olmsted Falls City Council (See Section 1232.07).

1032.10 REMEDIES.

Nothing in this Chapter shall be construed as limiting any judicial or regulatory remedies that the City may have, at law or in equity, for enforcement of this Chapter.

Supplemental Rights of Way Administration for Small Cell Facilities and Wireless Support Structures

1032.11 PURPOSE AND INTENT

(A) The purpose of these supplemental provisions is to establish general procedures and standards, consistent with all applicable federal and state laws and local, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures in the right-of-way.

(B) The intent of these supplemental provisions is to:

(1) Establish basic criteria for applications to locate small cell facilities and wireless support structures in the right-of-way and authorize the Mayor or his or her Designee to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants;

(2) Ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;

(3) Preserve the character of the City of Olmsted Falls by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;

(4) Enhance the ability of wireless communications carriers to deploy small cell facilities and wireless support structures in the City quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;

(5) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of small cell facilities and wireless support structures for such facilities;

(6) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

(7) The Supplemental Provisions of Chapter 1032 of these Codified Ordinances regarding Small Cell Facilities and Wireless Support Structures shall prevail in the case of any inconsistency with Chapter 1271 or ORC Chapter 4939, to the extent permitted by law. If these Supplemental Provisions of Chapter 913 are silent on any provision of ORC Chapter 4939, then the provisions of ORC Chapter 4939 shall prevail.

1032.12 APPLICABILITY

(A) Subject to the Ohio Revised Code and approval of an application under these supplemental provisions, an owner or operator may collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City right-of-way.

(1) An owner or operator shall comply with generally applicable standards that are consistent with this chapter and adopted by the City for construction and public safety in the right-of-way.

(2) All structures and facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the right-of-way by the City, the traveling public, or other public utilities.

(B) Exclusions.

(1) Amateur radio facilities. These supplemental provisions shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station owner or operator or is used exclusively for receive-only antennas.

(2) Certain over-the-air receiving devices (OTARD). These supplemental provisions shall not govern the installation of any OTARD antennas covered under FCC regulations codified in 47 C.F.R. §§1.4000 et seq., as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.

(3) Handsets and user equipment. These supplemental provisions shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the right-of-way.

(C) The permitting procedures and authorizations set forth herein shall apply only to the placement of small cell facilities and wireless support structures in the right-of-way, and do not authorize the construction and operation of a wireline backhaul facility, which continue to be governed by Chapter 1032: Rights of Way Administration.

(D) Relationship to other chapters. These supplemental provisions shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right-of-way. (E) Nothing in these supplemental provisions precludes the City from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure.

1032.13 DEFINITIONS

(A) General use of terms.

(1) The terms, phrases, words, and their derivations used in Sections 1032.11 through 1032.20 shall have the meanings given in this section.

(2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.

(3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.

(4) The words "shall" and "will" are mandatory and "may" is permissive.

(5) Words not defined shall be given their common and ordinary meaning.

(B) Defined terms.

(1) Abandoned means Small Cell Facilities or Wireless Support Structures that are unused for a period of three hundred sixty-five days without the owner or operator otherwise notifying the City and receiving the City's approval.

(2) Accessory Equipment means any equipment used in conjunction with a Wireless Facility or Wireless Support Structure. "Accessory Equipment" includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets.

(3) Affiliate, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(4) Agent means a person that provides the City written authorization to work on behalf of a public utility.

(5) Antennae means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to, radio, television, cellular, paging, personal telecommunications service, internet, and microwave telecommunications.

(6) Applicant means any person that submits an application to the City to site, install, construct, collocate, modify, and/or operate a small cell facility or wireless support structure in the right-of-way according to the requirements of this chapter.

(7) Cable Operator means any person or group of persons:

(a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or

(b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(8) Cable Franchise means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. 522 Section 546), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

(9) Cable Service means

(a) The one-way transmission to subscribers of

(i) video programming, or

(ii) other programming service; and

(b) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(10) City Property means and includes all real property owned by the City, other than Public Streets and public easements, and all property held in a proprietary capacity by the City, which are not subject to Public Right-of-Way consent and requirements of this Supplemental Chapter.

(11) Clear Zone means the unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.

(12) Collocation or Collocate means to install, mount, maintain, modify, operate, or replace small cell facilities on an existing publicly-owned wireless support structure.

(13) Construct, Constructing, Construction, Etc., means installing, repairing, replacing or removing any Facility, regardless of the methods employed.

(14) Decorative Pole means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

- (a) Electric lighting;
- (b) Specially designed informational or directional signage;
- (c) Temporary holiday or special event attachments.

(15) Design Guidelines means administrative rules and regulations and specifications consistent with all applicable Federal and State laws, for the design, siting, landscaping and related techniques, construction, installation, collocation, modification, relocation, operation and removal for Small Cell Facilities and Wireless Support Structures in the City's Right-of-Way, so as to blend these facilities into their environment to preserve the character and aesthetics of the area.

(16) Districts, Preferred, Prohibited or Conditional means the areas of the City identified in Illustration "A" contained in the Design Guidelines, where Small Cell Facilities and Wireless Support Structures are preferred, prohibited, or conditional placement.

(17) Eligible Facilities Request means the same as defined by the FCC in 47 U.S.C. 1455 (a)(2), as may be amended, which defines that term as any request for modification of an existing support structure that does not substantially change the physical dimensions of such support structure, involving:

- (a) Collocation of new small cell facilities;
- (b) Removal of small cell facilities; or
- (c) Replacement of small cell facilities.

(18) Excavate, Excavating or Excavation means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any Construction activity.

(19) FCC means the U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

(20) Micro Wireless Facility means a small cell facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.

(21) Occupy or Use with respect to the right-of-way, means to place a tangible thing in the right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures,

appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

(22) Person means any individual, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for-profit.

(23) Public Utility or Utility means a facilities-based provider of wireless service to one or more end users in this state, or any company described in section 4905.03 of the Ohio Revised Code and as further defined in section 4905.02 of the Ohio Revised Code, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipe-lines, waterworks, and sewage disposal systems.

(23) Reconstruct, Reconstruction, Etc. means substantial physical change to all or a portion of an existing Facility or System involving Construction in public streets, utility easements, or Public Right-of-Way.

(24) Right-of-Way means the surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bikepath, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the Mayor or his or her Designee, entitle a permittee, in accordance with the terms hereof and of any right-of-way permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any service agreement or any right-of-way permit. Right-of-Way shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation.

(25) Right-of-Way Permit, Non-Residential means a permit issued by the City as required by Section 1032.14 that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the public right-of-way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved, improved, or unimproved surface that is part of the right-of-way.

(26) Right-of-Way Occupancy Fee means a fee levied to recover the costs incurred by the City and associated with the occupancy or use of right-of-way.

(27) Right-of-Way Permit, Small Cell means a small cell facility or wireless support structure right-of-way occupancy permit as further defined in these definitions.

(28) Routine Maintenance means repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that requires no more than one (1) working day to complete, is not an Emergency and does not include Excavation of the Public Right-of-Way.

(29) Service Provider means any Public Service Provider and/or Private Service Provider.

(30) Small Cell Facility means a wireless facility that meets both of the following requirements:

(a) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall

not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(31) Small Cell Facility Operator or Operator or Owner means a wireless service provider, or its documented designated agent, or cable operator or its documented designated agent, or a video service provider, or its documented designated agent, that operates a small cell facility and provides wireless service as defined herein. For the purpose of this chapter, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

(32) Substantial Change or Modification means a that modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(i) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the wireless support structure, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(b) It involves adding an appurtenance to the body of the wireless support structure that would protrude from the edge of the structure by more than six feet;

(c) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for wireless support structures in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the 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 structure;

(d) It entails any excavation or deployment outside the current site;

(e) It would defeat the concealment elements of the eligible support structure; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, 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 (1) through (4) of this definition.

(33) Tolling or Toll Period means the pausing or delaying of the running of a required time period.

(34) Utility Pole means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and decorative poles.

(35) Video Service Provider means a person granted a video service authorization under sections 1332.21 to 1332.34 of the Ohio Revised Code.

(36) Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

(a) **Equipment Associated with Wireless Communications:** Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration, including Small Cell Facilities.

(b) The term does not include any of the following:

(i) The structure or improvements on, under, or within which the equipment is collocated:

(ii) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(37) Wireless Service means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using Wireless Facilities.

(38) Wireless Support Structure means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) foot or taller sign pole, or Utility Pole capable of supporting a Small Cell Facility. As used in this Chapter “Wireless Support Structure” excludes all of the following:

(a) A utility pole or other facility owned or operated by a municipal electric utility.

(b) A utility pole or other facility used to supply traction power to public Transit systems, including railways, trams, streetcars, and trolleybuses.

(39) Wireline Backhaul Facility means a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

1032.14 APPLICATION REQUIRED.

(A) Anyone seeking to site small cell facilities in the right-of-way shall first duly file a written application with the City for a Non-Residential Right-of-Way, and for Small Cell Right-of-Way Permits, in accordance with the requirements in this Section and additional requirements set forth in the Design Guidelines, as modified from time to time by the Mayor or his or her Designee.

(B) General Requirements. The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.

(1) No person shall occupy or use the right-of-way except in accordance with law.

(2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.

(3) No person shall occupy or use the right-of-way without first obtaining, under this Section or 4939.031 of the Ohio Revised Code, any requisite consent of the City.

(C) Pre-Application Conference.

(1) Purpose. Applicants are strongly encouraged to contact the City and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations, design, and the application submittal, and the approval process in order to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the City.

(2) Appointment Required. An appointment is required for all pre-application conferences. Applicants must contact the designated City staff member as noted on the application form, who will provide applicants an appointment with all applicable City representatives in a timely manner.

(D) Categories of Applications. In accordance with federal and state law, rule and regulation the City shall classify every application to locate small cell facilities in the right-of-way as one of the following types:

(1) Eligible Facilities Request (Type I):

(a) Involves collocation, replacement, modification, or removal of small cell facilities on an existing publicly owned wireless support structure; and

(b) Does not substantially change the physical dimensions of the existing wireless support structure.

(2) Collocation with Substantial Modifications (Type II):

(a) Involves collocation, replacement or modification of small cell facilities on an existing publicly owned wireless support structure; and

(b) Substantially changes the physical dimensions of the existing publicly owned wireless support structure.

(3) Wireless Support Structure (Type III):

(a) Involves the construction, modification, or replacement of a wireless support structure owned or operation by a wireless provider associated with a small cell facility within the right-of-way.

(4) Wireless Support Structure Removal (Non-Residential Right-of-Way Permit):

(a) Involves the removal of a wireless support structure and associated small cell facilities from within the right-of-way owned or previously operated by a wireless provider.

(E) Required Application Materials. Unless otherwise required by state or federal law, all applicants shall submit to the City the following materials and information associated with each application type in order for the application to be considered complete:

(1) Completed application form and fee as specified on the application.

(2) A scaled and dimensioned site plan (not smaller than one inch equals 50 feet) clearly indicating the following:

(a) Proposed location within the right-of-way including nearest cross street intersection(s);

(b) For adjacent parcel(s) perpendicular to the proposed small cell facility location, property ownership, including current ownership;

(c) All existing conditions within 300 feet of the proposed location, including but not limited to, buildings, utilities within the right-of-way and associated above grade structures, location of electric service and fiber optic cable, all other underground and overhead utilities, small cell structures and facilities, sidewalks/shared-use paths, back of adjacent curb/edge of pavement, driveways and street trees.

(d) Dimensions shall be provided from the proposed small cell facility to existing wireless support structures and equipment, utility structures, back of curb/edges of pavement including driveways and sidewalks.

(e) Dimensions shall be provided between proposed wireless support structures and associated ground mounted equipment.

(f) Scaled and dimensioned elevations/profiles and sections (not smaller than 1 inch equals 5 feet) of existing wireless support structures and/or new wireless support structures clearly indicating the following, as applicable:

(i) Height from established grade at the base of the wireless support structure to the highest point of the wireless support structure and the height to the highest point of proposed antenna or antenna enclosures, as applicable (overall height).

(ii) Height from established grade at the base of the wireless support structure to the lowest point of all proposed small cell equipment to be installed on the wireless support structure

(iii) The distance from the outer edge of the wireless support structure parallel to the outer edge of all equipment associated with the small cell facility to be installed on the support structure.

(g) Scaled and dimensioned details of proposed small cell facilities, including elevations/profiles, plans and sections (not smaller than 1 inch equals 5 feet) clearly indicating the following, as applicable:

(i) Height, width, depth and volume in cubic feet of all proposed antenna and exposed elements and/or proposed antenna enclosures.

(ii) Height, width, depth and volume of all other wireless equipment associated with the facility, with all electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services clearly labeled.

(iii) Method of installation/connection to pole or ground, as applicable.

(iv) Color specifications for all small cell support structures and associated exposed equipment, cabinets and concealment elements.

(v) Electrical plans and wiring diagrams

(vi) Footing and foundation drawings and structural analysis sealed and signed by a professional engineer in the State of Ohio

(h) Manufacturer's specification sheets for all small cell facility equipment proposed, including poles, equipment cabinets, shrouds, or concealment devices, antennas, meters, radios, switches, telecommunications demarcation boxes, and grounding equipment.

(i) Scaled and dimensioned landscape plans associated with required screening of ground mounted small cell equipment (where applicable), including a planting plan with proposed plant species, quantities, spacing, height at installation, and planting details.

(F) Required Application Materials for Small Cell Facilities Removal.

(a) For applications involving the removal of small cell facilities under an Eligible Facilities Request, the following materials and information shall be provided:

(a) Completed application form and fee as specified on the application.

(b) A scaled and dimensioned site plan (not smaller than one inch equals 20 feet) clearly indicating the following:

(i) Proposed location within the right-of-way including nearest cross street intersection;

(ii) Adjacent parcel(s) perpendicular to the existing small cell facility location property ownership, including current ownership.

(c) All existing conditions within 50 feet of the existing small cell facilities locations to be removed, including but not limited to, buildings, utilities within the right-of-way and associated above grade structures, location of electric service and fiber optic cable, all other underground and overhead utilities, small cell structures and facilities, sidewalks/shared-use paths, back of adjacent curb/edge of pavement, driveways, street trees and plant material.

(d) Scaled and dimensioned site and/or structure remediation details in accordance with Small Cell Design Guidelines requirements (not smaller than 1 inch equals 4 feet) clearly indicating the following:

(i) Proposed remediation plan for modifications made to City-owned wireless support structures and other areas of the right-of-way associated with collocation of small cell wireless facilities and ground mounted equipment after the removal of these facilities.

(ii) Proposed restoration of electric and fiber optic connections after removal of small cell facilities, as applicable.

(G) Required Application Materials for Wireless Support Structure Removal. For applications involving the removal of a wireless support structure installed in association with a small cell facility, the following materials and information must be provided:

(a) Non-Residential Right-of-Way Permit application and fee as specified in these Supplemental provisions.

1032.15 APPLICATION REVIEW TIMEFRAMES AND PROCESS

(A) Permit Application Review Timeframes.

(1) Eligible Facilities Request (Type I). The City shall process Eligible Facilities Requests in accordance with the Ohio Revised Code, 47 C.F.R. 1.40001, and Sections 913.11 through 913.20 herein not later than sixty (60) days after the date of filing by an entity of a completed application.

(2) Collocation with Substantial Modifications (Type II). The City shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on an existing wireless support structure where substantial modifications are required to the wireless support structure not later than ninety (90) days after the date of filing by a person of a completed application.

(3) New Wireless Support Structure (Type III). The City shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility not later than one hundred twenty (120) days following the date of filing of a complete application by an entity.

(4) Wireless Support Structure Removal (Type IV). The City shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the Non-Residential Right-of-Way Permit required for this activity.

(B) Failure to grant or deny within prescribed timeframes. If the City fails to approve or deny a request for consent under this section or a request for a relevant work permit within the required time period, provided the time period is not tolled under sub-section (D) below, the request shall be deemed granted upon the requesting entity providing notice to the City that the time period for acting on the request has lapsed.

(C) Application Denials.

(1) The City shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.

(2) If a request for consent is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the City, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(D) Tolling of required timeframes.

(1) The time periods required in this Section may be tolled only:

(a) By mutual agreement between the entity requesting consent and the City;

(b) In cases where the City determines that the application is incomplete; or

(c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in this Section due to the lack of resources of the City, then the City may toll the time limits as follows:

(i) As a community population of 30,000 or less individuals, the time period may be tolled for up to twenty-one days for fifteen or more small cell facility or wireless support structure requests received by the City within any consecutive thirty-day period.

(ii) Further, for every additional fifteen requests that the City receives above the thresholds provided above the City may toll the time period for those requests for up to fifteen days in addition to the time period provided in division (1)(c)(1) of this section.

(iii) In no instance shall the City toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the City shall provide an owner or operator written notice of the time limit for a small cell facility or wireless support structure request.

(2) To toll the time period for incompleteness, the City shall provide written notice to the person requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described herein and in accordance with state and federal law or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.

(3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the City's notice of incompleteness.

(4) If a supplemental submission is inadequate, the City shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(E) Timeframe for completion of permit.

(1) Permits granted for an Eligible Facilities Requests, Collocations with Substantial Modifications and New Wireless Support Structures shall be completed by the owner or operator or its agent within one hundred eighty days after issuance of the permit, unless:

(a) The City and the owner or operator agree to extend this period; or

(b) A delay is caused by make-ready work for a City-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:

(i) The owner or operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services; and

(ii) The additional time to complete installation does not exceed three hundred sixty days after issuance of the permit.

(2) If divisions (1)(a) and (b) of this section cannot be met, the permit shall be void unless the City grants an extension in writing to the owner or operator.

(F) Consolidated application for multiple small cell facilities and/or wireless support structures.

(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file at the applicants discretion, a consolidated application for up to 15 small cell facility requests or up to 15 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:

(a) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.

(b) The City may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(2) In the case of a consolidated application, the fees provided for in section 4939.0316 of the Ohio Revised Code and Section 1032.19 may be cumulative. However, the City, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.

(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Ohio Revised Code. A request by a single owner or operator for a new or replacement support structure and associated small cell facility constitutes one request.

(G) Small Cell and Wireless Support Structure activities not requiring consent.

(1) City consent shall not be required for either of the following activities conducted in the right-of- way:

(a) Routine maintenance of wireless facilities; (b) The replacement of wireless facilities with wireless facilities that are consistent with the City's current design requirements and guidelines and that are either:

(i) Substantially similar to the existing wireless facilities; or

(ii) The same size or smaller than the existing wireless facilities.

(2) The City requires a Non-Residential Right-of-Way Permit for any activity described in division (1) of this section and for any activity for which consent is authorized herein and in accordance with state and federal law.

1032.16 SMALL CELL DESIGN GUIDELINES

(A) The Mayor or his or her Designee is hereby given authority to promulgate detailed Small Cell Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the City shall consider in reviewing an application:

- (1) The location of any ground-mounted small cell facilities;
- (2) The location of a small cell facility on a wireless support structure;
- (3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;
- (4) The design and appearance of a wireless support structure.

(B) The Small Cell Design Guidelines will provide examples of acceptable small cell facilities including visual depictions.

(C) The Small Cell Design Guidelines shall provide administrative and procedural guidance to applicants, such as a list of minimum application requirements.

(D) The provisions in this section shall not limit or prohibit the Mayor's or his or her Designee's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, the Small Cell Design Guidelines which do not conflict with state or federal law.

(E) The Mayor or his or her Designee shall have authority to update or supplement the Small Cell Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Small Cell Design Guidelines and the standards articulated in these supplemental provisions, the language of these supplemental provisions take precedence over the language of the Small Cell Design Guidelines.

1032.17 STANDARD CONDITIONS OF PERMIT APPROVAL

(A) Standard conditions of approval. Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this Section. The Mayor or his or her Designee may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.

(B) Small Cell Facility Permit Duration. The City's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the owner or operator and the City, except for generally applied permitting to safeguard the public health, safety, and welfare. An owner or operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees upon removal.

(C) Compliance with all applicable laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.

(D) Inspections; Emergencies. The City or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

(E) Relocation or adjustment as requested by City. If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an owner or ow shall relocate or adjust its facilities within the right-of-way at no cost to the City, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with local law.

(F) Contact information for responsible parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Department of Public Works.

(G) Indemnification. Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

(H) Interference with public safety radio services. In the event that the City has reason to believe that operator's radio communications operations are causing interference with the City's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the City to either rule out operator as the interference source or eliminate the interference.

Cooperation with the City may include, but shall not be limited to, temporarily switching the small cell facilities on and off for testing.

(I) Adverse impacts on adjacent properties. Operator shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.

(J) Good condition required. Small cell facilities and support structures shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property.

(K) Graffiti abatement. Operator shall remove any graffiti on the small cell facility at permittee's sole expense.

(L) RF exposure compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

(M) Relocation for public improvement projects. Operator shall remove and relocate the permitted small cell facility and/or support structure at Operator's sole expense to accommodate construction of a public improvement project by the City as required under these supplemental provisions.

(N) Removal of small cell facilities if use discontinued or abandoned.

(1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the Operator shall submit a Non-Residential Right-of-Way Permit as required by Section 1032.14, as written notice to the City of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility shall be considered abandoned and the City may remove it at the Operator's expense.

(2) Small cell facilities and wireless support structures determined by the City to be abandoned without application notice from the Operator may be removed by the City at the Operator's expense to ensure the public health, safety, and welfare.

1032.18 SAFETY REQUIREMENTS

(A) Prevention of failures and accidents. Any person who owns or operates a small cell wireless facility sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

(B) Compliance with fire safety and FCC regulations. Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

(C) Surety bond or equivalent financial tool for cost of removal. All owners or owners or operators must procure and provide to the City a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this section. The bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities or damage to City property caused by an operator or its agent of each small cell facility which the owner or operator installs in the right-of-way in case the City has to remove or pay for removal of the wireless facility. Two acceptable alternatives to a bond include a funds set aside and a letter of credit.

1032.19 RECOVERY OF COSTS

(A) Application processing fee. For processing an application for consent, the City may charge a fee for each small cell facility and wireless support structure requested as prescribed under Section 4939.031 of the Ohio Revised Code and as listed on the associated application forms. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

(B) Annual collocation fee. For reimbursement for owner or operator's attachment of small cell facilities to wireless support structures owned or operated by the City and located in the right-of-way, the City may charge an annual fee as prescribed under 4939.031 of the Ohio Revised Code and as listed on associated application forms. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

(C) Tax liabilities and assessments not applicable. Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject a municipal corporation to any state or local tax liabilities or assessments.

1032.20 SEVERABILITY

The provisions of any part of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

(Approved by ORD. _____ on _____.)