

ORDINANCE NO. 13-19

BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, amending Chapter 906, Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures, of the Codified Ordinances of the City of Lakewood in order to regulate small cell wireless facilities located in the right-of-way.

WHEREAS, Substitute House Bill 478 (Sub. H.B. 478) took effect on August 1, 2018; and

WHEREAS, Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 with regard to the authority of municipalities to regulate the installation of small cell wireless facilities in the right-of-way, including on utility poles, traffic signals, and street lights, including municipally-owned facilities, and to construct, maintain, modify, operate, or replace wireless support structures in the right-of-way; and

WHEREAS, Sub. H.B. 478 contained provisions addressing the fees that local governments could charge to Facilities Operators for applications to install Small Cell Facilities in the public right-of-way and for attachment of Small Cell Facilities to municipally-owned wireless support structures, which fee amounts resulted from extensive discussions involving municipalities, the Ohio Municipal League, and wireless service providers including AT&T, Verizon Wireless and Sprint, and many comments and suggestions from electric utilities, cable television providers, and additional small cell facility owners and operators who supported the fee provisions as reasonable and acceptable; and

WHEREAS, Sub H.B. 478 also revised ORC Chapter 4939 to authorize municipalities to adopt and enforce design guidelines applicable to small cell infrastructure deployment, provided that the guidelines must be reasonable, and written, and based upon objective criteria regarding (1) the location of ground-mounted small cell facilities; (2) the location of a small cell facility on a pole; (3) the appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of wireless support structures including height limitations otherwise consistent with the statute; and

WHEREAS, this Council on July 16, 2018 adopted Ordinance No. 34-18 creating a new Chapter 906 of the Codified Ordinance of the City of Lakewood to regulate the use and occupancy of the public rights-of-way within the City for small cell wireless facilities and support structures; and

WHEREAS, on September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Order known as the FCC "Small Cell Order," that limits and revises state and local authority to manage and regulate certain small cell wireless installations

within public rights-of-way nationwide, including local fees associated with such management and regulation, as well as the extent to which such regulations may deal with local aesthetic concerns, and preempts inconsistent state and local regulations; and

WHEREAS, the FCC in December 2018 denied local government-filed motions to stay the effective date of the Small Cell Order, which has been challenged in Court, such that the Order took effect on January 14, 2019; and

WHEREAS, this Council desires to amend its regulations applying to small cell facilities, new wireless support structures, and the persons and entities who desire to construct, operate, and maintain such facilities in the City, found in Chapter 906 of the Code, Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures, to lawfully exercise municipal authority on this subject in a manner that is consistent with Ohio Revised Code Chapter 4939 and the FCC's Small Cell Order; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality;

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this ordinance is an emergency measure and that it shall take effect immediately after its adoption by Council and approval by the Mayor because of the timing of the effectiveness of Sub. H.B. 478 and the FCC's Small Cell Order; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Chapter 906, Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures, of the Codified Ordinances of the City of Lakewood, currently reading as follows:

CHAPTER 906
Use of Public Ways for Small Cell Wireless Facilities
and Wireless Support Structures

- 906.01 Overview and Purpose; Definitions.
- 906.02 Consent Required.
- 906.03 Permit Application Types.
- 906.04 Consolidated Consent Applications.
- 906.05 Application Fee.
- 906.06 Attachment Fee.
- 906.07 Required Application Materials.
- 906.08 Application Review.
- 906.09 Permitting Process, Duration, and Termination.
- 906.10 Annual Registration.
- 906.11 Nonconforming Facilities.

- 906.12 Abandoned and Damaged Facilities.
- 906.13 Insurance Requirements.
- 906.14 Indemnification.
- 906.15 Financial Surety.
- 906.16 Reserved Space.
- 906.17 Removal or Relocation of Facilities.
- 906.18 Notice of Work.
- 906.19 Construction Permit.
- 906.20 Excavation Permit.
- 906.99 Penalties; Equitable Remedies.

906.01 OVERVIEW AND PURPOSE; DEFINITIONS.

(a) The purpose of this chapter is to:

- (1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City’s Right-of-Way to protect the health, safety, and welfare of the citizens of the City;
- (2) Preserve the character of the City, including the City’s neighborhoods, downtown, and historic districts;
- (3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures; and
- (4) Comply with, and not conflict with or preempt, all applicable state and federal laws.

(b) For the purpose of this chapter, and the interpretation and enforcement hereof, 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) “Applicant” means any person or entity who submits an Application pursuant to this chapter.
- (2) “Application” means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
- (3) “Accessory Equipment” means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.
- (4) “City” means the City of Lakewood.
- (5) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
- (6) “Design Guidelines” means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established and promulgated by the Director.
- (7) “Director” means the Director of Public Works or his or her designee.
- (8) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (9) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
 - (i) Operators;
 - (ii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
 - (iii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support

Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.

(10) “Eligible Facilities or Eligible Support Structure Request” means any request for modification of an existing support structure or base station that does not substantially change the physical dimension of such support structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:

(i) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than 10 percent or more than 10 feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than 6 feet;

(ii) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than four cabinets, whichever is less;

(iii) The installation for any new ground-mounted equipment cabinets if there are not existing ground-mounted equipment cabinets;

(iv) Any excavation or deployment outside of the current site of the Facility;

(v) Removal of any concealment elements of the Facilities or the Wireless Support Structure; and

(vi) Any change that does not comply with this chapter, the Design Guidelines established and promulgated by the Director, or state or federal law and regulations.

The threshold for measuring increases that may constitute a substantial change are cumulative, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the Spectrum Act on February 22, 2012.)

(11) “Operator” means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including 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.

(12) “Public Way” or “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 comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

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

(i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than 6 cubic feet in volume; and

(ii) All other wireless equipment associated with the facility is cumulatively not more than 28 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.

(14) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.

(15) “Small Cell Use Permit” means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

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

- (i) A utility pole or other facility owned or operated by a municipal electric utility; and
- (ii) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

906.02 CONSENT REQUIRED.

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the Director in accordance with the requirements in this chapter, Design Guidelines established and promulgated by the Director, O.R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the Director and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this chapter, and the Design Guidelines established and promulgated by the Director. Further, no Small Cell Use Permit shall be construed as any warranty of title.

906.03 PERMIT APPLICATION TYPES.

Applicants shall classify their Application as one of the following types:

- (a) Type 1: Eligible Facilities Requests.
- (b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that does not constitute an Eligible Facilities Request.
- (c) Type 3: New Wireless Support Structure. Such applications will address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.

906.04 CONSOLIDATED CONSENT APPLICATIONS.

(a) Pursuant to O.R.C. Section 4939.0312, an Applicant may file one consolidated application for up to 30 individual small cell Facilities or 30 individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.

(1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.

(2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.

(3) Applications for Facilities and Wireless Support Structures cannot be commingled.

(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

906.05 APPLICATION FEE.

(a) The fee for each application is \$250.00. The City shall adjust the fee by 10 percent every five years, rounded to the nearest five dollars, beginning in the year 2023.

(b) An Application shall not be deemed complete until the fee is paid.

(c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application.

906.06 ATTACHMENT FEE.

(a) In addition to the Application Fee, an annual fee shall be paid to the City for each Small Cell Facility attached to a municipally-owned Wireless Support Structure is \$200.00. The City shall adjust the attachment fee by 10 percent every five years, rounded to the nearest five dollars, beginning in the year 2023.

(b) The first-year attachment fee shall be paid when the collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the collocation is complete.

906.07 REQUIRED APPLICATION MATERIALS.

The Applicant must submit the following documentation with each Application.

(a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.

(b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.

(c) Fully dimensional scaled site plan (scale no smaller than one inch equals 40 feet). The site plan must include:

(1) The exact proposed location of the Facilities within the Right-of-Way;

(2) All existing Facilities with all existing transmission equipment;

(3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within 100 feet surrounding the proposed Facilities.

(4) The legal property boundaries within 100 feet surrounding the proposed Facilities;

(5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within 100 feet surrounding the proposed Facilities; and

(6) Access and utility easements within 100 feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one inch equals 10 feet) of the proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within 300 feet of the proposed Facilities prior to submitting the Application. The notice shall include:

(1) Name of the Applicant;

(2) Estimated date Applicant intends to submit the Application;

(3) Detailed description of the proposed Facilities and the proposed location; and

(4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals 40 feet.

(f) A preliminary installation/construction schedule and completion date.

(g) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed small cell equipment.

(h) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system,

or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.

(i) A landscape plan that demonstrates screening of proposed small cell equipment.

(j) Drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:

(1) The manufacturer's name and model number;

(2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and

(3) The noise level generated by the equipment, if any.

(k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.

906.08 APPLICATION REVIEW.

(a) Applications shall be evaluated in the timeframes as follows:

(1) Type 1 Applications: 60 days.

(2) Type 2 Applications: 90 days.

(3) Type 3 Applications: 120 days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete

(c) The timeframes set out in subsection (a) may also be tolled as follows:

(1) If the City receives more than 30 applications in a 30-day period, then the City may toll for an additional 21 days.

(2) If the City receives more than 30 applications in a 30-day period, then the City may toll for an additional 15 days for every 15 applications received.

(3) By mutual agreement between the Applicant and the City.

(4) When an Applicant submits an underground area waiver pursuant to Section 906.13(d) of the Codified Ordinances, in which case the City may toll for an additional 14 days.

(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 906.16, then the Director may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for consent is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:

(1) Failure to provide information required under Section 906.07;

(2) Failure to comply with Design Guidelines established and promulgated by the Director;

(3) Failure to provide financial surety pursuant to Section 906.15;

(4) Failure to remove abandoned Facilities as required under Section 906.12;

(5) Conflict with the historic nature or character of the surrounding area;

(6) Conflict with planned future improvements in the Right-of-Way; and

(7) Failure to comply with generally applicable health, safety, and welfare requirements.

906.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of no longer than 10 years. Permits may be renewed for five-year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of 10 years or the duration of the Facilities Operator's agreement with a wireless service provider provided pursuant to Section 906.06(k), whichever is shorter.

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.

(e) Pursuant to O.R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within 180 days of issuance of the permit, unless the delay is caused by:

(1) Make-ready work for a municipally-owned Wireless Support Structure; or

(2) Due to the lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within 60 days after the Small Cell Use Permit was granted.

If the additional time to complete the installation exceeds 360 days after the issuance of the permit, then the permit shall be deemed terminated regardless of the cause of the delay.

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within 180 days of issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 906.06, then the Small Cell Use Permit will expire on the 90th day from the date the annual attachment fee was due.

(h) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60 days' written notice to the City.

(i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.

(j) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit.

906.10 ANNUAL REGISTRATION.

Facilities Operators shall comply with the annual registration requirements set forth in Section 904.03.

906.11 NONCONFORMING FACILITIES.

(a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this chapter but that do not comply with the requirements of this chapter may remain in the Right-of-Way but shall be considered a nonconforming facility.

(b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant to Chapter 904 within 90 days of the date this ordinance takes effect.

(c) If a nonconforming facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this chapter, the Design Guidelines established and promulgated by the Director, and state and federal law and regulations.

906.12 ABANDONED AND DAMAGED FACILITIES

(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within 365 days from the date the use

was discontinued, the Facilities shall be considered a nuisance and the City may remove the Facilities at the expense of the Facilities Operator.

(b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than 30 days after obtaining written notice that the Facilities were damaged. If the damaged Facilities are not repaired within 30 days, then the damaged Facilities shall be considered a nuisance and the City may repair or remove the Facilities at the expense of the Facilities Operator.

906.13 INSURANCE REQUIREMENTS.

Facilities Operators shall comply with the insurance requirements set forth in Section 904.02.

906.14 INDEMNIFICATION

A Facilities Operator 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.

906.15 FINANCIAL SURETY.

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this chapter and Chapter 4939. The financial surety must be in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within 10 business days after City notifies the Facilities Operator that it has drawn on the financial surety.

906.16 RESERVED SPACE.

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-Way and on Wireless Support Structures for future utility, safety, or transportation uses. Such space may be reserved in an ordinance or plan approved by the Mayor, City Manager, City Council, Building Commissioner, or Planning Commission.

906.17 REMOVAL OR RELOCATION OF FACILITIES.

(a) The City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within 90 days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within 30 days of receiving notice that the Facilities are located improperly.

906.18 NOTICE OF WORK.

(a) A Facilities Operator shall notify the Director of all nonemergency work within 10 calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.

906.19 CONSTRUCTION PERMIT.

(a) Facilities Operators are required to obtain a construction permit pursuant to Section 904.07 prior to commencing any of the following activities:

- (1) Collocation of small cell equipment on a Wireless Support Structure;
- (2) Replacement, modification, repair, or maintenance of small cell equipment;
- (3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
- (4) Any excavation of the Right-of-Way in connection with the activities described in this subsection (a).

(b) The construction permit fee shall be the fee set forth in Section 904.08.

906.20 EXCAVATION PERMIT.

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Section 904.07.

906.99 PENALTIES; EQUITABLE REMEDIES.

(a) Any person or entity found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter, or with any of the provisions of the Design Guidelines established and promulgated by the Director, shall be guilty of a misdemeanor of the fourth degree and fined not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.

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

is hereby repealed, and new Chapter 906, Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures, of the Codified Ordinances of the City of Lakewood is enacted to read as follows:

**CHAPTER 906
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906.01 OVERVIEW AND PURPOSE; DEFINITIONS.

(a) The purpose of this chapter is to:

- (1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City’s Right-of-Way to protect the health, safety, and welfare of the citizens of the City;
- (2) Preserve the character of the City, including the City’s neighborhoods, downtown, other business districts and historic districts;
- (3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures; and
- (4) Comply with, and not conflict with or preempt, all applicable state and federal ~~laws-law; and~~
- (5) Facilitate deployment of small cell Facilities and advanced wireless communications within the City in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.

(b) For the purpose of this chapter, and the interpretation and enforcement hereof, 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) “Applicant” means any person or entity who submits an Application pursuant to this chapter.
- (2) “Application” means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
- (3) “Accessory Equipment” means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.
- (4) “City” means the City of Lakewood.
- (5) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
- (6) “Design Guidelines” means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established and promulgated by the Director.
- (7) “Director” means the Director of Public Works or his or her designee.
- (8) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (9) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
 - (i) Operators;

(ii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and

(iii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.

(10) “Eligible Facilities or Eligible Support Structure Request” means any request for modification of an existing support structure or base station that does not substantially change the physical dimension of such support structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:

(i) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than 10 percent or more than 10 feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than 6 feet;

(ii) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than four cabinets, whichever is less;

(iii) The installation for any new ground-mounted equipment cabinets if there are not existing ground-mounted equipment cabinets;

(iv) Any excavation or deployment outside of the current site of the Facility;

(v) Removal of any concealment elements of the Facilities or the Wireless Support Structure; and

(vi) Any change that does not comply with this chapter, the Design Guidelines established and promulgated by the Director, or state or federal law and regulations.

The threshold for measuring increases that may constitute a substantial change are cumulative, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the Spectrum Act on February 22, 2012.)

(11) “Operator” means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including 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.

(12) “Public Way” or “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 comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

(13) “Small Cell Facility” means a wireless facility ~~that~~:

(a) That meets both of the following requirements:

(i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than 6 cubic feet in volume; and

(ii) All other wireless equipment associated with the facility is cumulatively not more than 28 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; and

(b) Includes a “Small Wireless Facility,” which is a type of Small Cell Facility (i) in which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume, (ii) where such antenna is associated with a structure (a) 50 feet or less in height, including the antenna, or (b) that is not more than 10 percent taller than adjacent structures, or (c) is not extended in height by more than 10 percent or to a height exceeding 50 feet, whichever is greater, and (iii) which also otherwise satisfies the definition of “Small Wireless Facilities” found in the FCC’s Small Cell Order adopted September 26, 2018, FCC 18-133.

(14) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.

(15) “Small Cell Use Permit” means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

(16) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this chapter, “Wireless Support Structure” excludes all of the following the following except in connection with a Small Wireless Facility, in which case the following are not excluded:

(i) A utility pole or other facility owned or operated by a municipal electric utility; and

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

906.02 CONSENT REQUIRED.

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the Director in accordance with the requirements in this chapter, Design Guidelines established and promulgated by the Director, O.R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the Director and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this chapter, and the Design Guidelines established and promulgated by the Director. Further, no Small Cell Use Permit shall be construed as any warranty of title.

906.03 PERMIT APPLICATION TYPES.

Applicants shall classify their Application as one of the following types:

(a) Type 1: Eligible Facilities Requests.

(b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that does not constitute an Eligible Facilities Request.

(c) Type 3: New Wireless Support Structure. Such applications will address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify

that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.

(d) For Type 2 and Type 3 Applications, Applicants shall indicate whether the Application is or is not for a Small Wireless Facility.

906.04 CONSOLIDATED CONSENT APPLICATIONS.

(a) Pursuant to O.R.C. Section 4939.0312, an Applicant may file one consolidated application for up to 30 individual small cell Facilities or 30 individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.

(1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.

(2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.

(3) Applications for Small Cell Facilities and Wireless Support Structures cannot be commingled.

(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

(c) Although applications for Small Wireless Facilities may be filed on a consolidated basis, applications involving Small Wireless Facilities may not be commingled with applications for other Small Cell Facilities or Wireless Support Structures. The limit on the number of applications that may be filed in a consolidated application pursuant to Section 906.04(a) shall not apply to applications involving Small Wireless Facilities.

906.05 APPLICATION FEE.

(a) The fee for each application is \$250.00. The City shall adjust the fee by 10 percent every five years, rounded to the nearest five dollars, beginning in the year 2023.

(b) An Application shall not be deemed complete until the fee is paid.

(c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application.

906.06 ATTACHMENT FEE.

(a) In addition to the Application Fee, an annual fee shall be paid to the City for each Small Cell Facility attached to a municipally-owned Wireless Support Structure is \$200.00. The City shall adjust the attachment fee by 10 percent every five years, rounded to the nearest five dollars, beginning in the year 2023.

(b) The first-year attachment fee shall be paid when the collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the collocation is complete.

906.07 REQUIRED APPLICATION MATERIALS.

The Applicant must submit the following documentation with each Application.

(a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.

(b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.

(c) Fully dimensional scaled site plan (scale no smaller than one inch equals 40 feet). The site plan must include:

- (1) The exact proposed location of the Facilities within the Right-of-Way;
- (2) All existing Facilities with all existing transmission equipment;

(3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within 100 feet surrounding the proposed Facilities.

(4) The legal property boundaries within 100 feet surrounding the proposed Facilities;

(5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within 100 feet surrounding the proposed Facilities; and

(6) Access and utility easements within 100 feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one inch equals 10 feet) of the proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within 300 feet of the proposed Facilities prior to submitting the Application. The notice shall include:

(1) Name of the Applicant;

(2) Estimated date Applicant intends to submit the Application;

(3) Detailed description of the proposed Facilities and the proposed location; and

(4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals 40 feet.

(f) A preliminary installation/construction schedule and completion date.

(g) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed small cell equipment.

(h) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.

(i) A landscape plan that demonstrates screening of proposed small cell equipment.

(j) Drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:

(1) The manufacturer's name and model number;

(2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and

(3) The noise level generated by the equipment, if any.

(k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.

906.08 APPLICATION REVIEW.

(a) Applications shall be evaluated in the timeframes as follows:

(1) Type 1 Applications: 60 days.

(2) Type 2 Applications: 90 days- except that for Small Wireless Facilities, the timeframe for a Type 2 Application shall be 60 days.

(3) Type 3 Applications: 120 days- except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be 90 days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete, as described below:

~~(e) The timeframes (1) To toll the time period for incompleteness, the City must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application; except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.~~

~~(A) In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to subsection (b)(1), the time period set out forth in subsection (a) shall be deemed never to have started running at all until Applicant provides a supplemental submission.~~

~~(2) The time period set forth in subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the City's notice of incompleteness issued pursuant to subsection (b), but may be tolled again if the City notifies the Applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the City of the deficiencies in a supplemental submission tolls the time period set forth in subsection (a) until the Applicant supplies the specified information.~~

~~(c) The timeframes in subsection (a) may be tolled by mutual agreement between the Applicant and the City. The timeframes in subsections (a)(2) and (a)(3) may also be tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of subsections (c)(1) and (c)(2) below do not apply:~~

~~(1) If the City receives more than 30 between thirty (30) and forty-five (45) applications in a 30thirty-day period, then the City may toll for an additional 21 days beginning with the 31st application.~~

~~(2) If the City receives more than 30forty-five (45) applications in a 30thirty-day period, then the City may toll for an additional fifteen (15) days for every fifteen (15) applications received, up to a maximum tolling period of ninety (90) days, as indicated below:~~

~~(3) By mutual agreement between the Applicant and the City.~~

(4)(A) Applications 46-60:	36 additional days
(B) Applications 61-75:	51 additional days
(C) Applications 76-90:	66 additional days
(D) Applications 91-105:	81 additional days
(E) Applications 106+:	90 additional days.

~~(3) When an Applicant submits an underground area waiver pursuant to Section 906.13(d) of the Codified Ordinances, in which case the City may toll for an additional 14 days.~~

~~(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 906.16, then the Director may resolve the conflict in any reasonable and nondiscriminatory manner.~~

~~(e) If a request for consent is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:~~

- ~~(1) Failure to provide information required under Section 906.07;~~
- ~~(2) Failure to comply with Design Guidelines established and promulgated by the Director;~~
- ~~(3) Failure to provide financial surety pursuant to Section 906.15;~~
- ~~(4) Failure to remove abandoned Facilities as required under Section 906.12;~~
- ~~(5) Conflict with the historic nature or character of the surrounding area;~~

- (6) Conflict with planned future improvements in the Right-of-Way; and
- (7) Failure to comply with generally applicable health, safety, and welfare requirements.

906.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of no longer than 10 years. Permits may be renewed for five-year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of 10 years or the duration of the Facilities Operator's agreement with a wireless service provider provided pursuant to Section 906.06(k), whichever is shorter.

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.

(e) Pursuant to O.R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within 180 days of issuance of the permit, unless the delay is caused by:

- (1) Make-ready work for a municipally-owned Wireless Support Structure; or
- (2) Due to the lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within 60 days after the Small Cell Use Permit was granted.

If the additional time to complete the installation exceeds 360 days after the issuance of the permit, then the permit shall be deemed terminated regardless of the cause of the delay.

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within 180 days of issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 906.06, then the Small Cell Use Permit will expire on the 90th day from the date the annual attachment fee was due.

(h) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60 days' written notice to the City.

(i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.

(j) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit.

906.10 ANNUAL REGISTRATION.

Facilities Operators shall comply with the annual registration requirements set forth in Section 904.03.

906.11 NONCONFORMING FACILITIES.

(a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this chapter but that do not comply with the requirements of this chapter may remain in the Right-of-Way but shall be considered a nonconforming facility.

(b) Any person or entity who owns or operates a ~~Noneonforming Facility~~non-conforming facility shall register such facility pursuant to Chapter 904 within 90 days of the date this ordinance takes effect.

(c) If a nonconforming facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this

chapter, the Design Guidelines established and promulgated by the Director, and state and federal law and regulations.

906.12 ABANDONED AND DAMAGED FACILITIES

(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within 365 days from the date the use was discontinued, the Facilities shall be considered a nuisance and the City may remove the Facilities at the expense of the Facilities Operator.

(b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than 30 days after obtaining written notice that the Facilities were damaged. If the damaged Facilities are not repaired within 30 days, then the damaged Facilities shall be considered a nuisance and the City may repair or remove the Facilities at the expense of the Facilities Operator.

906.13 INSURANCE REQUIREMENTS.

Facilities Operators shall comply with the insurance requirements set forth in Section 904.02.

906.14 INDEMNIFICATION

A Facilities Operator 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.

906.15 FINANCIAL SURETY.

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this chapter and Chapter 4939. The financial surety must be in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within 10 business days after City notifies the Facilities Operator that it has drawn on the financial surety.

906.16 RESERVED SPACE.

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-Way and on Wireless Support Structures for future utility, safety, or transportation uses. Such space may be reserved in an ordinance or plan approved by the Mayor, City Manager, City Council, Building Commissioner, or Planning Commission.

906.17 REMOVAL OR RELOCATION OF FACILITIES.

~~(a) The~~(a) Consistent with O.R.C. Section 4939.08, the City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within 90 days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator’s sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within 30 days of receiving notice that the Facilities are located improperly.

906.18 NOTICE OF WORK.

(a) A Facilities Operator shall notify the Director of all nonemergency work within 10 calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.

906.19 CONSTRUCTION PERMIT.

(a) Facilities Operators are required to obtain a construction permit pursuant to Section 904.07 prior to commencing any of the following activities:

- (1) Collocation of small cell equipment on a Wireless Support Structure;
- (2) Replacement, modification, repair, or maintenance of small cell equipment;
- (3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
- (4) Any excavation of the Right-of-Way in connection with the activities described in this subsection (a).

(b) The construction permit fee shall be the fee set forth in Section 904.08.

(c) With respect to the proposed installation of Small Cell Facilities or Wireless Support Structures upon which such Facilities are to be mounted, a Facilities Operator shall utilize a form supplied by the Director for such purpose.

906.20 EXCAVATION PERMIT.

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Section 904.07.

906.21 WAIVER.

It is within the reasonable discretion of the Director to waive any portion or portions of this Chapter, as permitted or warranted under state and federal law, where such requirements, in the Director’s judgment, are not necessary or appropriate to protect the City’s interests and the purposes and intent of this Chapter.

906.99 PENALTIES; EQUITABLE REMEDIES.

(a) Any Applicant or Operator or other person or entity acting as the agent of an Applicant or Operator found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter, or with any of the provisions of the Design Guidelines established and promulgated by the Director, shall be guilty of a misdemeanor of the fourth degree and fined not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.

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

Section 2. The Director of Public Works remains empowered to establish, promulgate and enforce reasonable, written design guidelines with objective, technologically feasible criteria to regulate small cell facilities and wireless support structures not inconsistent with Chapter 906.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were passed in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such actions were in meetings open to the public and in compliance with legal requirements.

Section 4. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in its preamble, and provided it receives the affirmative vote of at least two thirds of the members of Council this ordinance shall take effect and be in force immediately after its adoption by Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

President of Council

Clerk of Council

Approved: _____

Mayor