

CHAPTER 880
Use of Public Ways by Service Providers

880.01 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 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 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) 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.
- (2) 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.
- (3) Antenna 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.
- (4) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or Routine Maintenance.
- (5) City means the City of North Royalton, Ohio.
- (6) 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 Chapter.
- (7) Collocation or Collocate means to install, mount, maintain, modify, operate, or replace a Wireless Facility on a Wireless Support Structure.
- (8) Construct, Constructing, Construction, etc. means installing, repairing, replacing or removing any Facility, regardless of the methods employed.
- (9) Emergency means an unforeseen occurrence or condition calling for immediate action.
- (10) Engineer means the Engineer of the City or Engineer's designee.
- (11) 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.
- (12) Facilities or Facility means the plant, equipment and property, including but not limited to Accessory Equipment, Antenna, 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 for a Small Cell Facility.
- (13) Lane Obstruction means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing or removing any Facility, including (A) the lifting or removing of manhole or handhole covers, and (B) the opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.
- (14) Micro Wireless Facility means a Small Cell Facility that is not more than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that does not have an exterior antenna more than eleven (11) inches in length suspended on cable strung between Wireless Support Structures.
- (15) Monopole means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
- (16) Occupancy, Occupy or Use means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, constructing,

Ordinance No. 18-49
Exhibit A

repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities.

(17) 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.

(18) Person means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts, public utility, any other entity, and individuals and includes their lessors, trustees and receivers; but specifically excludes the City itself.

(19) Private Service Provider means any Person who, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to Section 880.02 of this Chapter, directly or indirectly owns, controls, operates or manages a Small Cell Facility and Wireless Support Structure within the City's Public Right-of-Way used or to be used for the purpose of transmitting, receiving, distributing or providing telecommunications or Wireless Services.

(20) 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 comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

(21) Public Street means the paved and unpaved portion of any street, road, boulevard, drives, highway, freeway, parkway, lane court, alley or other Public Right-of-Way in which the City has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes.

(22) PUCO or Public Utilities Commission of Ohio means the State Administrative agency, or successor, authorized to regulate and oversee certain Public or Private Service providers and Services in the State of Ohio.

(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) 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.

(25) Service Provider means any Private Service Provider.

(26) 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, tele-communications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(27) State means the State of Ohio.

(28) Utility Pole means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications services.

(29) 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.

(B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(C) The term includes Small Cell Facilities.

(D) 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.

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

(31) 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.

880.02 CONSENT TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Consent Required to Occupy Public Right-of-Way. No Person shall collocate a Small Cell Facility and construct, maintain, modify, operate, or replace a Wireless Support Structure in the Public Right-of-Way without obtaining prior consent from the City to do so.

(b) Initial Consent Presumed.

(1) A Person with a Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way on the effective date of this Chapter, who lawfully occupies the Public Right-of-way on the effective date of this Chapter, shall be presumed to have initial consent of the City for its existing Small Cell Facility and Wireless Support Structure to Occupy or use the Public Right-of-Way which has been previously approved by the City.

(2) Initial presumed consent for Occupancy or use of the Public Right-of-Way is limited to the existing Small Cell Facility and Wireless Support Structure.

(3) A Person with initial presumed consent is not relieved from compliance with this Chapter with respect to the ongoing Occupancy or Use of the Public Right-of-Way including, but not limited to, the Insurance and Indemnity requirements set forth in Sections 880.02(e) and (f) of this Chapter.

(c) Application for Consent to Occupy or Use Public Right-of-Way.

(1) The following Persons shall apply to the City for consent to Occupy or use the Public Right-of-Way on a form provided by the City, any Person who:

(A) Does not currently have an existing, Small Cell Facility on a Wireless Support Structure in the City's Public Right-of-Way and desires to Construct a new Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way; or

(B) Has initial presumed consent or City consent to Occupy or Use the Public Right-of-Way for an existing Small Cell Facility on a Wireless Support Structure but is planning:

(i) a Capital Improvement or Reconstruction of an existing Small Cell Facility on a Wireless Support Structure; or

(ii) to Construct an additional Small Cell Facility on a Wireless Support Structure anywhere in the City.

(2) The application for Consent to Occupy or Use the Public Right-of-Way shall include the following information with respect to the applicant's or Service Provider's planned or existing Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way, as well as plans for any planned Capital Improvements or Reconstruction:

(A) The identity, legal status and federal tax identification number of the applicant, including all Affiliates of the applicant or Service Provider in the State of Ohio that will Use or Occupy the Public Right-of-Way or are in any way responsible for the Small Cell Facility and Wireless Support Structure in the Public Right-of-Way.

(B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the application or initial registration and available at all reasonable times to be notified in case of emergency.

(C) A description of the existing or proposed Small Cell Facility and Wireless Support Structure in the City's Public Right-of-Way, including but not limited to engineering plans, specifications or a map, all in sufficient detail to identify:

(i) the location of the applicant's Small Cell Facility and Wireless Support Structure or proposed Small Cell Facility and Wireless Support Structure.

(ii) the location of all existing Overhead and/or underground Facilities, Facility, Small Cell Facilities, Wireless Support Structure in the Public Right-of-Way in the area of the applicant's or Service Provider's Small Cell Facility and Wireless Support Structure or proposed Small Cell Facility and Wireless Support Structures that is sufficient to show the impact of the applicant's Small Cell Facility and Wireless Support Structure on other existing Facilities, Facility, Small Cell Facility or Wireless Support Structures.

(iii) the location of all overhead and underground utility easements.

(D) A preliminary Construction schedule and completion date for all planned Capital Improvements.

(E) Evidence that the applicant or Service Provider has complied, or will comply, with indemnification and insurance requirements of this Chapter.

(F) Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO.

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

(H) A description of the structures, improvements and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

(I) A description of the impact of Construction, Reconstruction, installation, maintenance or repair of a Small Cell Facility and Wireless Support Structure on trees in or adjacent to the Public Right-of-Way, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during Construction.

(J) All applications shall be accompanied by the certification of a State of Ohio registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Ordinance No. 18-49
Exhibit A

(K) All applications which involve a Lane Obstruction or work on, in, under, across or along any Public Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Department of Transportation's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The City may require the Service Provider to use and employ the City Police Force for Traffic Control.

(L) Such other and further information as may reasonably be requested by the City.

(3) The City, by and through its Planning Commission, shall grant or deny, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within ninety (90) days of the date on which the Person filed the application and all necessary information with the City.

(A) The City may withhold, deny or delay its consent to a Person's application to Occupy or Use the Public Right-of-Way based on the health, safety and welfare of the City and in accordance with City Ordinances and Ohio law. These reasons may include but not be limited to those criteria set forth in Section 880.02(d) of this Chapter.

(B) If the City denies a Person's application to Occupy or Use the Public Right-of-Way, the City shall provide its reasons in writing for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the City's consent to Occupy or Use the Public Right-of-Way.

(4) The City's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the City's consent for such Person to Occupy or Use the Public Right-of-Way.

(5) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee in the amount of Two Hundred Fifty Dollars (\$250.00) per site and assessed by the Building Commissioner to reimburse the City for its administrative costs.

(6) A Person seeking to Construct, modify, Collocate, or replace more than one (1) Small Cell Facility or one (1) Wireless Support Structure may file a consolidated application for consent to occupy or use the Public Right-of-Way for up to thirty (30) Small Cell Facilities in a single application or up to thirty (30) Wireless Support Structure requests in a single application. Said single application may only address multiple Small Cell Facilities or multiple Wireless Support Structures if they each involve substantially the same type of Small Cell Facilities or substantially the same type of Wireless Support Structures. The City may separately address Small Cell Facilities or Wireless Support Structures for which incomplete information has been received or which are denied. In the case of a single application, each Small Cell Facility or Wireless Support Structure proposed to be Constructed, modified or Collocated on, or replaced shall constitute a separate request for Consent to Occupy or use the Public Right-of-Way for purposes of tolling the response deadline set forth in this Chapter.

(7) The time periods set forth herein may be tolled:

(A) By mutual agreement between the Person requesting consent and the City;

(B) Where the City determines that the application is incomplete; or

(C) By the City in the event it receives applications for at least twenty-five (25)

Small Cell Facilities or Wireless Support Structures contained in pending requests, in which case the City may toll the ninety (90) day period for up to twenty-one (21) days.

(8) To toll the time period for incompleteness, the City shall provide written notice to the Person requesting consent not later than thirty (30) days after receiving the request, clearly and specifically delineating all missing documents or information.

(9) The time period resumes when the Person makes a supplemental submission in response to the City's notice of incompleteness.

(10) If a supplemental submission is inadequate, the City shall notify the Person not later than ten (10) 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 (A) to (C) of this Section.

(d) Small Cell Facility in Public Right-of-Way. No Person shall occupy or use the Public Right-of-Way as a Small Cell Facility on a Wireless Support Structure without first obtaining the approval of the proposed improvements by the Planning Commission. The Person proposing the improvements shall deliver to the Planning Commission sixteen (16) sets of the plans and specifications including all necessary details, profiles, and cross-sections for each proposed improvement. The Planning Commission shall approve or disapprove of such proposed improvements based on the following standards:

(1) Compliance with all City codes and laws and other governmental laws where required;

(2) The recommendation of all administrative departments in regard to the improvements;

(3) The effect of the proposed improvements on the right-of-way and in relation to all other improvements already installed or approved;

(4) The proposed location of the improvements in regard to such items as sight lines, drainage, safety, and visual interference;

(5) The size, bulk, and location of the improvements in relation to obtaining proper light, air, privacy, usable open space, and compatibility with surrounding uses;

(6) The proper screening or placement of the improvements to minimize the negative effects of the improvements on the right-of-way or adjoining uses;

(7) Compliance with the United States Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD) and Ohio Department of Transportation Ohio Manual of Uniform Traffic Control Devices (OMUTCD).

(e) Service Provider Insurance. As a condition of the consent 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 as additional insured:

- (1) Comprehensive general liability insurance with limits not less than
 - (A) One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, for bodily injury or death to each Person;
 - (B) One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, for property damage resulting from any one accident; and
 - (C) One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, 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. 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 thirty (30) days after receipt by the City, by registered mail, of a written notice addressed to the Building Commissioner of such intent to cancel or not to renew.”

(3) Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) 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) All insurance policies required herein shall be written with an insurance company authorized to do business in the State of Ohio in relation to the specific type of insurance required.

(5) Upon written application to, and written approval by, the Director of Finance of the City, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section. As part of the review process, the Director of Finance may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(f) General Indemnification. Each application for consent to Occupy or Use the Public Right-of-Way 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 any and 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 in the design, Construction, Reconstruction, installation, operation, maintenance, repair or removal of its Small Cell Facility and Wireless Support Structure, and in providing or offering Services over the Small Cell Facility and Wireless Support Structure, whether such acts or omissions are authorized, allowed or prohibited by this Chapter.

880.03 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 880.02 shall be limited to a grant to Occupy or Use the specific Public Right-of-Way and defined portions thereof, including the specific Small Cell Facility and Wireless Support Structure and location along the Public Right-of-Way, as approved by the City.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent granted under Section 880.02 shall confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the City, other than as specifically provided in said consent.

(c) Rights Permitted. No consent granted under Section 880.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(d) Height. For a new Wireless Support Structure, the overall height of the Wireless Support Structure and any Collocated Antenna shall not be more than forty (40) feet in height above ground level.

(e) Maximum Size. The Small Cell Facility must conform to the size limitations as defined for a Small Cell Facility in Section 880.01(b)(26) of this Chapter.

(f) Color. The Small Cell Facilities shall be a color or colors that are consistent with or most blends into the Wireless Support Structure on which they are installed, unless a different color is needed for public safety or service reliability reasons.

(g) Wiring and Cabling. Wires and cables connecting the Small Cell Facility shall be installed in accordance with the version of the National Electrical Code adopted by the City and in force at the time of installation. In no event shall wiring and cabling serving the Small Cell Facility interfere with any

Ordinance No. 18-49
Exhibit A

wiring or cabling installed by a cable television or video service operator, electric utility, telephone utility or other utility.

(h) **Reservation by City for Future Uses.** The City may reserve space for future public safety or transportation uses in the Public Right-of-Way, or on a Wireless Support Structure or pole owned by the City. Said reservation of space shall be set forth in a documented plan, subject to the approval of the Planning Commission. A reservation of space by the City shall not preclude placement of a pole or Collocation of a Small Cell Facility by a Private Service Provider; provided, however, that said pole or Wireless Support Structure shall accommodate any future use reserved by the City. In the event it is necessary to replace any City pole or Wireless Support Structure to accommodate the Collocation of a Service Provider's Small Cell Facility, the Service Provider shall pay for the replacement of the City pole or Wireless Support Structure.

(i) **Alternate Location.** The City may propose an alternate location to the proposed location of a new Wireless Support Structure that is either within one hundred (100) feet of the location set forth in a Person's application for Consent to Occupy or use a Public Right-of-Way; or is within a distance that is equivalent to the width of the Public Right-of-Way that the new Wireless Support Structure is proposed to be located on; whichever is greater. Any applicant or Service Provider shall be required to use the alternate location proposed by the City, if the applicant or Service Provider has the right to use the alternate location on reasonable terms and conditions, and the alternate location does not impose technical limits or additional costs.

(j) **Time for Completion.** Any Collocation or Construction of a new Wireless Support Structure shall be completed within one hundred eighty (180) days after the issuance of a Consent to Occupy or Use the Public Right-of-Way. The City and Service Provider may extend this completion date by mutual agreement.

(k) **Underground Placement.** No Small Cell Facility or Wireless Support Structure shall be constructed in a Public Right-of-Way that is located in an area in which it was required, or will be required under the North Royalton Codified Ordinances, to install any electric Facilities, telephone Facilities, or any other utility Facilities underground. This prohibition shall not apply to the replacement of a Wireless Support Structure or the Collocation of a Small Cell Facility on a Wireless Support Structure that exists or might exist in said designated area. A Service Provider may apply to the Planning Commission for a waiver of the underground placement requirement for the Construction of a new Wireless Support Structure if the Service Provider is unable to achieve its service objection under the following circumstances:

- (1) From a location in the Public Right-of-Way where the prohibition does not apply;
- (2) In a utility easement the Service provider has the right to access;
- (3) In or on other suitable locations or structures made available by the City at reasonable

rates, fees and terms.

(l) **Guy Wires Restricted.** Guy wires and similar support structures may not be used as part of the installation of any Small Cell Facility and Wireless Support Structure, unless the Small Cell Facility is proposed to be attached to an existing Utility Pole that incorporated guy wires prior to the date of the request for consent.

(m) **Grounding.** The Small Cell Facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the City regarding grounding of wireless facilities.

(n) **Signage.** Other than warning or notification signs required by federal law, or identification and location markings required by the City, a Small Cell Facility and Wireless Support Structure shall not have signs installed thereon.

(o) **Maintenance of Small Cell Facility and Wireless Support Structure.** Each Service Provider shall maintain its Small Cell Facility and Wireless Support Structure in good and safe condition and in a manner that complies with all applicable federal, State and local requirements.

(p) **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.

(q) **Interference with the Public Right-of-Ways.** No Service Provider may locate or maintain its Small Cell Facility and Wireless Support Structure 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 Small Cell Facilities and Wireless Support Structures shall be moved by the Service Provider, temporarily or permanently, as determined by the Building Commissioner when necessary to protect the public, comply with the provisions of this Chapter, or otherwise comply with local, state or federal laws. The expense or cost to move said Small Cell Facility and Wireless Support Structure shall be the responsibility of the Service Provider.

(r) **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, or other public or private property located in, on or adjacent thereto.

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

Ordinance No. 18-49
Exhibit A

(1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way or City Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days, at the Building Commissioner's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(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 Building Commissioner. 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.

(t) Damage to Service Provider's Small Cell Facility and Wireless Support Structure. Unless directly and proximately caused by the willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or loss of any Small Cell Facility and Wireless Support Structure in the Public Right-of-Way of the City as a result of or in connection with, but not limited to, any public works, public improvements, Construction, Excavation, grading, filling, salting, snow removal or work of any kind in the Public Right-of-Way by or on behalf of the City.

(u) Duty to Provide Information. 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.

(v) Assignments or Transfers of Consent. Consent 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 consent 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 consent to Occupy or Use the Public Right-of-Way pursuant to Section 880.02 of this Chapter; and

(B) Any other information reasonably required by the City.

(w) Revocation of Consent. Consent 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:

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

(2) Construction, Reconstruction, installation, location, operation or Excavation in violation of City safety and/or Construction requirements.

(3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit application or registration required by the City.

(4) Abandonment of Small Cell Facility and/or Wireless Support Structure in the Public Right-of-Way.

(5) Failure to relocate or remove a Small Cell Facility and/or Wireless Support Structure or failure to restore the Public Right-of-Way, as required by this Chapter.

(6) Insolvency or bankruptcy of the Service Provider.

(7) The Small Cell Facility and/or Wireless Support Structure is in a state of disrepair which creates a public nuisance.

(8) Violation of material provisions of this Chapter.

(9) Construction under the consent is not commenced within two (2) years of the consent approval date.

(x) Notice and Duty to Cure. In the event that the Building Commissioner believes that grounds exist for revocation of consent to Occupy or Use the Public Right-of-Way or Construction Permit, the Building Commissioner 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.

(y) Municipal Structures. A Service Provider may Collocate a Small Cell Facility on a Wireless Support Structure owned by the City and which is located in the Public Right-of-Way, provided that the Person complies with applicable design guidelines and conditions for such Collocation adopted by the City that are consistent with said design guidelines under this Chapter. The City may condition approval of said Collocation on the replacement or modification of the City's Wireless Support Structure, at the Service Provider's cost, if the City determines that replacement or modification of the City's Wireless Support Structure is necessary. The City shall retain ownership of any City Wireless Support Structure that is replaced. The City shall annually charge the amount of Two Hundred Dollars (\$200.00) per each Small Cell Facility Collocated on a Wireless Support Structure owned by the City and located in the Public Right-of-Way.

880.04 LOCATION, RELOCATION AND REMOVAL OF SMALL CELL FACILITY AND WIRELESS SUPPORT STRUCTURE.

- (a) **Excess Capacity.** To reduce Excavation and congestion in the Public Right-of-Way, it is the City's goal to encourage Service Providers to share occupancy of utility poles, as well as to construct, whenever possible, excess available space on utility poles and Wireless Support Structures for occupancy of future Small Cell Facilities in the Public Right-of-Way. The Service Provider may charge a reasonable market lease rate to other Providers for occupancy of the additional utility pole space as reimbursement.
- (b) **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 Small Cell Facility and Wireless Support Structure in the Public Right-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
- (1) The Construction, Reconstruction, 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.
- (c) **Removal of Unauthorized Small Cell Facility and Wireless Support Structure.** Within thirty (30) days following written notice from the City, any Service Provider or other Person that owns, controls or maintains any unauthorized Small Cell Facility, Wireless Support Structure or related appurtenances in the Public Right-of-Way shall, at its own expense, remove the Small Cell Facility, Wireless Support Structure or appurtenances from the Public Right-of-Way of the City. After the thirty (30) days have expired, the City may remove the Small Cell Facility, Wireless Support Structure or appurtenances from the Public Right-of-Way at the other party's expense. A Small Cell Facility and a Wireless Support Structure is unauthorized and subject to removal in the following circumstances:
- (1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;
 - (2) Upon abandonment of a Small Cell Facility and Wireless Support Structure in the Public Right-of-Way of the City;
 - (3) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;
 - (4) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;
 - (5) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not permitted pursuant to the City's consent to Occupy or Use the Public Right-of-Way or Construction Permit;
- (d) **Emergency Removal or Relocation of Small Cell Facility and Wireless Support Structure.** The City retains the right and privilege to cut or move any Facilities, or stop work on any Construction, Reconstruction, installation, operation or Excavation, located in the Public Right-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare.

880.05 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.

- (a) **Notice of Work.** Except in case of Emergency, as provided in Section 880.05(c), or for Routine Maintenance as provided in Section 880.05(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the City without twenty-four (24) hours advance notice to the City, obtaining consent to Occupy or Use the Public Right-of-Way pursuant to Section 880.02, if required.
- (b) **Routine Maintenance and New Service Orders.**
- (1) A Service Provider need not obtain a Construction Permit or notify the City prior to or after commencing any Routine Maintenance or New Service Orders that do not include the Construction in, or Excavation or Lane obstruction of, a Public Right-of-Way or closing of a Public Street.
 - (2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than two (2) hours, the Service Provider shall provide the City with forty-eight (48) hours advance written notice prior to commencing the Routine Maintenance or New Service Order, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable governmental 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. When notice is required, the Service Provider shall notify the Building Commissioner.

880.06 MISCELLANEOUS PROVISIONS.

(a) Other City Ordinances. In the event that any provision of this Chapter conflicts with any other provision of the City's Codified Ordinances or other ordinances or resolutions of the City, the more restrictive provision shall govern.

(b) Preemption by State and Federal Law. Except as may be preempted by applicable State or Federal law, rates, regulations, and orders, this Chapter shall apply and be controlling over each Service Provider engaged in the business of transmitting, supplying or furnishing of Services originating, passing through, or terminating in the City.

(c) Exemption for City-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to Facilities, Facility, Small Cell Facility, Wireless Support Structure or Private Facility owned or operated by the City or any of its operations.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

880.99 PENALTIES AND OTHER REMEDIES.

(a) Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct Offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

(i) In lieu of the criminal penalties set forth above, the Building Commissioner may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.

(ii) The Civil Forfeiture shall be in an amount payable to the City of not less than \$100.00 nor more than \$500.00 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(iii) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.

(iv) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City if, in the City's sole discretion, it determines that additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.

(v) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged violation before the Board of Building Code Appeals no sooner than thirty (30) days and not later than sixty (60) days from receipt of the notice of dispute.

(vi) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days after the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any administrative or judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.