

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30050

Ordinance No. 3636 Page 1 of 3 Passed July 10, 2018

**AN ORDINANCE ADOPTING CHAPTER 99, AMENDING SECTION 97.05, AND ADDING SECTION 37.39 OF THE CODE OF ORDINANCES OF THE CITY OF WEST CARROLLTON, OHIO REGARDING SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES, AND DECLARING AN EMERGENCY.**

**WHEREAS**, Ohio Senate Bill 331 was signed into law on December 19, 2016, and had an effective date of March 21, 2017, which regulated the placement of small cell wireless facilities in public rights-of-way; and

**WHEREAS**, prior to its effective date, Senate Bill 331 was challenged by municipalities across the state of Ohio, including the City of West Carrollton, Ohio, for violating home rule and other constitutional provisions; and

**WHEREAS**, the Common Pleas Court of Franklin County found SB 331 unconstitutional and as a result of the pending litigation, municipalities and industry groups compromised and drafted Ohio House Bill 478 which regulates small cell facilities and wireless support structures installed by wireless telecommunication companies within public rights-of-way; and

**WHEREAS**, Governor Kasich signed House Bill 478 into law on May 2, 2018 and it becomes effective on August 1, 2018; and

**WHEREAS**, House Bill 478 permits municipal control over the design, aesthetics, and placement of small cell facilities, it limits the size of small cell facilities, and it exempts municipal electric poles from small cell attachments; and

**WHEREAS**, adopting the proposed Chapter 99 and amending Section 97.05 of the Code of Ordinances of the City of West Carrollton, Ohio regarding small cell facilities and wireless support structures is in the best interest of the health, safety and welfare of the community by being able to manage the design, aesthetics, and placement of small cell facilities and wireless support structures in the public right-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, COUNTY OF MONTGOMERY, STATE OF OHIO:**

**SECTION I.** That Chapter 99 of the Code of Ordinances of the City of West Carrollton, Ohio entitled "Small Cell Facilities & Wireless Support Structures" as set forth in Exhibit A, attached hereto and made a part hereof, be and hereby is adopted.

**SECTION II.** That Section 97.05 of the Code of Ordinances of the City of West Carrollton, Ohio be and hereby is amended as follows, for the purpose of establishing underground utility areas:

# RECORD OF ORDINANCES

Ordinance No. 3636 Page 2 of 3 Passed July 10, 2018

Delete Section 97.05(B)(2) and renumber:

“97.05 REVOCABLE STREET PERMIT REQUIREMENTS.

(B) Permit Requirements.

(2) ~~When practical, in the opinion of the City, the policy of the City is to require the underground location of a new Utility System Element in the Public Right-of-Way.”~~

Add new Section 97.05(D):

“97.05 REVOCABLE STREET PERMIT REQUIREMENTS.

(D) **Underground Utility Areas Within the Public Right-of-Way.**

(1) Purpose and Intent. The purpose of this section is to establish general procedures and standards for underground utility areas within the City of West Carrollton, Ohio rights-of-way.

(2) Underground Utility Areas. From the effective date of this section, all Utility System Elements located in the public right-of-way, except poles, shall be placed underground within the following areas which shall be described as “Underground Utility Areas”:

(a) Central Avenue:

(i) North side from Cedar Street to North Locust Street.

(ii) North side from North Elm Street to Weir Street.

(b) Fame Road.

(c) Fortune Road.

(d) Progress Road.

(e) Gargrave Road.

(3) Annexed Property. All property annexed into the City of West Carrollton, Ohio after the effective date of this legislation shall be automatically deemed as an Underground Utility Area.

(4) Waiver. In the event of practical difficulties, the City Manager may grant a waiver from the requirements of this section for good cause shown.”

**SECTION III.** That Chapter 37: General Fee Schedule of the Code of Ordinances of the City of West Carrollton, Ohio be and hereby is amended as follows, for the purpose of adding administrative fees for installing small cell facilities and wireless support structures in the city’s right-of-way:

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30050

Ordinance No. 3636 Page 3 of 3 Passed July 10, 20<sup>18</sup>

## **37.39 SMALL CELL FACILITY AND WIRELESS SUPPORT STRUCTURE FEES. (\$99.09)**

The fee for processing an application for consent for each small cell facility and wireless support structure requested shall be a one-time fee of two hundred fifty dollars (\$250).

The fee for reimbursement for an operator's attachment of small cell facilities to wireless support structures owned or operated by the City and located in the right of way shall be two hundred dollars (\$200) annually.

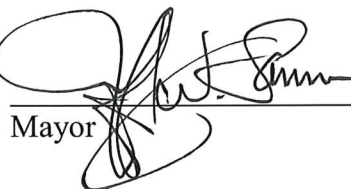
**SECTION IV.** That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION V.** That this Ordinance is hereby declared to be an emergency measure for the immediate preservation of the public health, safety and welfare of the City of West Carrollton, Ohio and for the further reason so that the City of West Carrollton, Ohio may implement its regulations prior to the effective date of House Bill 478; NOW WHEREFORE this Ordinance shall be effective immediately upon its adoption.

PASSED by the Council of the City of West Carrollton, State of Ohio, this 10<sup>th</sup> day of July, 2018.

Attest:

  
Clerk of Council

  
Mayor

Effective Date: July 10<sup>th</sup> 2018



# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30050

*Ordinance No.* \_\_\_\_\_ *Passed* \_\_\_\_\_, 20\_\_\_\_

## **EXHIBIT A**

### **CHAPTER 99:**

### **SMALL CELL FACILITIES & WIRELESS SUPPORT STRUCTURES**

#### **Section**

- 99.01 Purpose and Intent
- 99.02 Applicability
- 99.03 Definitions
- 99.04 Application Required
- 99.05 Application Review Timeframes and Process
- 99.06 Small Cell Design Guidelines
- 99.07 Standard Conditions of Permit Approval
- 99.08 Safety Requirements
- 99.09 Recovery of Costs
- 99.10 Nonconformity
- 99.11 Revocation
- 99.12 Appeals
- 99.13 Severability
- 99.99 Penalty

#### **§99.01 PURPOSE AND INTENT**

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

(B) The intent of this chapter is to:

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

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

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

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

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

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

## **§99.02 APPLICABILITY**

(A) Subject to the Ohio Revised Code and approval of an application under this chapter, an operator may collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City right of way as follows:

(1) An operator shall comply with generally applicable standards that are consistent with Chapter 97: Rights of Way and this chapter and any rules, regulations, and design guidelines adopted by the City of West Carrollton for the collocation of a small cell facility and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the City right of way, unless otherwise prohibited by state or federal law.

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

### **(B) Exclusions.**

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

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

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

(C) The permitting procedures and authorizations set forth herein shall apply only to small cell facilities and wireless support structures in the right of way, and do not authorize the construction and operation of a wireline backhaul facility, which continues to be governed by Chapter 97: Rights of Way.

(D) Relationship to other chapters. This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right of way.

(E) Nothing in this chapter precludes the City from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure in the City right of way.

### **§99.03 DEFINITIONS**

#### **(A) General use of terms.**

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

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

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

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

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

#### **(B) Defined terms.**

*ABANDONED.* Any small cell facilities or wireless support structures that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the City and receiving the City's approval.

*AFFILIATE.* When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

*AGENT.* A person that provides the City written authorization to work on behalf of a public utility.

*ANTENNA.* Communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

*APPLICANT.* Any person that submits an application to the City to site, install, construct, collocate, modify, and/or operate a small cell facility or wireless support structure in the right of way according to the requirements of this chapter.

*CABLE OPERATOR.* Any person or group of persons: (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

*CABLE SERVICE.* (1) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and (2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

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

*CITY.* Means the municipal government known as the City of West Carrollton, Ohio.

*CITY MANAGER.* Means the administrative head of the municipal government known as the City of West Carrollton, Ohio, or the official designee appointed by the City Manager to implement all or some of the provisions of this chapter.

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

*COLLOCATION* or *COLLOCATE.* To install, mount, maintain, modify, operate, or replace wireless small cell facilities on a wireless support structure.

*DECORATIVE POLE.* A pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: (1) Electric lighting; (2) Specially designed informational or directional signage; (3) Temporary holiday or special event attachments.

*DESIGN GUIDELINES.* Means those detailed design guidelines, specifications and examples promulgated by the City Manager for the design and installation of small cell facilities and



wireless support structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations.

*ELIGIBLE FACILITIES REQUEST.* Means the same as defined by the FCC in 47 U.S.C. 1455 (a)(2), as may be amended, which defines that term as any request for modification of an existing support structure that does not substantially change the physical dimensions of such support structure, involving: (1) Collocation of new small cell facilities; (2) Removal of small cell facilities; or (3) Replacement of small cell facilities.

*FRANCHISE AUTHORITY.* See *CABLE FRANCHISE*.

*FCC.* The U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

*HISTORIC DISTRICT.* A building, property, or site, or group of buildings, properties, or sites that are either of the following: (1) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C; (2) A registered historic district as defined in section 149.311 of the Revised Code.

*MICRO WIRELESS FACILITY.* A small cell facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.

*MUNICIPAL INFRASTRUCTURE.* The structures, facilities, fixtures, and other such appurtenances owned by the City of West Carrollton, Ohio, including but not limited to: poles, fixtures, manholes, pipes, wires, fiber, transformers, hydrants, valves, catch basins, roadways, traffic signals, sidewalks, curb & gutters, street signs, junction boxes.

*OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES* or *OMUTCD.* The uniform system of traffic control devices promulgated by the Ohio Department of Transportation.

*OCCUPY* or *USE.* With respect to the right of way, to place a tangible thing in the right of way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

*OPERATOR.* A wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of this chapter, “operator” includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

**PERSON.** Any natural person, corporation, or partnership and also includes any governmental entity.

**PUBLIC UTILITY or UTILITY.** A facilities-based provider of wireless service to one or more end users in this state, or any company described in section 4905.03 of the Ohio Revised Code and as further defined in section 4905.02 of the Ohio Revised Code, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipe-lines, water-works, and sewage disposal systems.

**RIGHT-OF-WAY.** The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bike path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the city “right of way” shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right of way permit or by administrative regulation.

**RIGHT OF WAY PERMIT, GENERAL.** A permit issued by the City, subject to Chapter 97: Rights of Way, that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the right of way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the right of way. Also, a permit issued by the City that must be obtained in order to occupy the city right of way.

**RIGHT OF WAY PERMIT, SMALL CELL.** Means a permit issued by the City for the collocation, construction, maintenance, operation, or replacement of small cell facility(ies) and/or wireless support structures in, along, across, upon and under the right of way.

**SMALL CELL FACILITY.** A wireless facility that meets both of the following requirements:

(1) 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.

(2) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

**SUBSTANTIAL CHANGE.** Has the same meaning as described in 47 C.F.R. §1.40001(b)(7).

**TOLLING or TOLL PERIOD.** The pausing or delaying of the running of a required time period.

*UTILITY POLE.* A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and decorative poles.

*VIDEO SERVICE PROVIDER.* A person granted a video service authorization under sections 1332.21 to 1332.34 of the Ohio Revised Code.

*WIRELESS FACILITY.*

(1) 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.

(2) The term includes small cell facilities.

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

(a) The structure or improvements on, under, or within which the equipment is collocated;

(b) 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.

*WIRELESS SERVICE.* Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

*WIRELESS SERVICE PROVIDER.* A person who provides wireless service as defined herein.

*WIRELESS SUPPORT STRUCTURE.* A pole, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small cell facilities, excluding utility poles or other facilities used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

*WIRELINE BACKHAUL FACILITY.* A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

#### **§99.04 APPLICATION REQUIRED**

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

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

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

(3) No person shall occupy or use the right of way without first obtaining, under this chapter, Chapter 97: Rights of Way, or section 1332.24 or 4939.031 of the Ohio Revised Code, any requisite consent of the City. Before placing small cell facilities or wireless support structures in the right of way, an operator must apply for and receive a general right of way permit as provided by Chapter 97: Rights of Way.

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

(C) Application Required. In accordance with federal and state law and the City code, an operator may apply to the City to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City rights of way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/ or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City rights of way shall first duly file a written application with the City, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the City Manager.

(D) Required Application Materials. Unless otherwise required by state or federal law, all applicants shall submit to the city materials and information associated with each application as outlined in the Design Guidelines in order for the application to be considered complete.

## **§99.05 APPLICATION REVIEW TIMEFRAMES AND PROCESS**

### **(A) Permit Application Review Timeframes**

(1) *Collocation of Small Cell Facilities on Existing Wireless Support Structures*. The City shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than ninety (90) days after the date of filing by an entity of a completed application.

(2) *New Wireless Support Structures and Associated Small Cell Facilities*. The City shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right of way not later than one hundred twenty (120) days after the date of filing by an entity of a completed application.

(3) *Wireless Support Structure and/or Small Cell Facilities Removal.* The City shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right of way typical to the review timeframes for the General Right of Way Permit required for this activity.

(4) *Eligible Facilities Request.* The City shall approve Eligible Facilities Requests in accordance with Ohio Revised Code Chapter 4939, 47 C.F.R. §1.40001, and with this chapter not later than sixty (60) days after the date of filing by an entity of a submitted application.

(B) Failure to grant or deny within prescribed timeframes. If the City fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required under §99.05(A), provided the time period is not tolled under §99.05(D) or extended with the written consent of the applicant and the City Manager, the request shall be deemed granted upon the requesting entity providing notice to the City that the time period for acting on the request has lapsed.

(C) Application denials.

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

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

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

(D) Tolling of required timeframes.

(1) The time periods required in §99.05(A) may be tolled only:

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

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

(c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in §99.05(A) due to the lack of resources of the city, then the city may toll the time limits as follows:

(i) The time period may be tolled for up to twenty-one days for the first fifteen small cell facility or wireless support structure requests received by the city above the thresholds provided in the table below within any consecutive thirty-day period:

Population of city at time Small Cell Facility or Wireless Support Structure Applications are received	Number of Applications
30,000 persons or less	15 applications or more
30,001 to 40,000 persons	20 applications or more
40,001 to 50,000 persons	25 applications or more
50,001 to 60,000 persons	30 applications or more
60,001 to 100,000 persons	60 applications or more

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

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

(2) To toll the time period for incompleteness, the City shall provide written notice to the person requesting consent not later than thirty (30) days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.0313 of the Ohio Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.

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

(4) If a supplemental submission is inadequate, the City shall notify the entity not later than ten (10) days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.



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

(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to thirty (30) small cell facility requests or up to thirty (30) wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:

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

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

(2) In the case of a consolidated application, the fees provided for in section 4939.0316 of the Ohio Revised Code and §99.04 may be cumulative. However, the City, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.

(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Ohio Revised Code and §99.05(D)(1) herein. A request by a single operator for a new or replacement wireless support structure and associated small cell facility constitutes one request.

(4) If multiple applications are received by the City to install two or more wireless support structures that would violate the requirements of section 99.06 Design Guidelines, or to collocate two or more small cell facilities on the same wireless support structure, the City shall process and render a decision in the order they are received.

(5) In the event that an application is received by the City to install a wireless support structure or small cell facility in a location in common with another application for a facility in the ROW, preference shall be granted in the following order of service provided:

- (a) Municipal Infrastructure
- (b) Water
- (c) Electricity
- (d) Gas
- (e) Landline Telephone
- (f) Fiber
- (g) CATV
- (h) Petroleum Pipelines
- (i) Wireless Service

(F) Timeframe for completion of permit.

(1) Collocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within one hundred eighty (180) days after issuance of the permit, unless:

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

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

i. The operator has made a timely request within sixty (60) days after the issuance of the permit for commercial power or backhaul services; and

ii. The additional time to complete installation does not exceed three hundred sixty (360) days after issuance of the permit.

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

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

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

(a) Routine maintenance of wireless facilities;

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

i. Substantially similar to the existing wireless facilities; or

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

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

(H) Amendments. Amendments to an application in process which are not part of a response to a notice of incompleteness or a correction notice shall be treated as a new application.

## **§99.06 SMALL CELL DESIGN GUIDELINES**

(A) The City Manager shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the City shall consider in reviewing an application:

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

(B) The Design Guidelines shall describe small cell facilities preferences.

(C) The provisions in this section shall not limit or prohibit the City Manager's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.

(D) The City Manager shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Design Guidelines and the standards articulated in this chapter of the City of West Carrollton Code of Ordinances, the language of this chapter shall take precedence over the language of the Design Guidelines.

## **§99.07 STANDARD CONDITIONS OF PERMIT APPROVAL**

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

(B) Small Cell Facility Permit duration.

(1) The City's approval term of an attachment to a wireless support structure shall be for a period of not less than ten (10) years, with presumption of renewal for successive five (5) year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the City, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under §99.07(M).

(2) In the event that any court of competent jurisdiction invalidates any portion of state or federal law which mandates approval of any permit, such permit shall automatically expire 1 year from the date of the judicial order and all appeals have been exhausted.

(C) Compliance with all applicable laws.

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

(2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six (6) months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

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

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

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

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

(H) Interference with public safety radio services. In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 CFR §§ 22.970-973 and 47 CFR §§ 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.

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

(J) Good condition required. Small cell facilities and wireless support structures including but not limited to all landscaping, fencing, and related equipment shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures including but not limited to all landscaping, fencing, and related equipment shall be subject to generally applicable property maintenance requirements as provided in the Property Maintenance Code, and to visual inspection by code enforcement officers to ensure compliance. Enforcement procedures for any property maintenance violation by a small cell facility and/or wireless support structure shall be as provided in the Property Maintenance Code.

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

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

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

(1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, as provided in section 99.05(A)(3), which shall serve as the notice to the City of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within three hundred sixty-five (365) days of discontinued use, the small cell facility and/or wireless support structure shall be considered abandoned and the City may remove it at the owner's expense.

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

(3) The City reserves the right to inspect and to request information from the operator, which the operator shall provide following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right of way.

(N) Site Restoration. Upon completion of the new work, the contractor shall restore the street and/or alley pavement; all concrete walks, driveway aprons, and other concrete; and all tree lawns and/or sod strips with topsoil and sod as required.

(O) General Construction. All work and designs shall comply with the following general standards for construction in the city right of way:

- (1) City of West Carrollton Codified Ordinances;
- (2) City of West Carrollton Standard Construction Drawings;
- (3) City of West Carrollton Construction and Material Specifications;
- (4) Ohio Department of Transportation (ODOT) Location and Design Manual;
- (5) ODOT Standard Drawings;
- (6) ODOT Construction and Material Specifications;
- (7) Ohio Manual of Traffic Control Devices;
- (8) American Association of State Highway Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets;
- (9) AASHTO Roadside Design Guide;
- (10) AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities;
- (11) AASHTO Guide for Development of Bicycle Facilities;
- (12) United States Access Board (USAB) Proposed Guidelines for Pedestrians in the Public Right-of-Way;
- (13) USAB American with Disabilities Act Accessibility Guidelines;
- (14) National Fire Protection Association 70 National Electric Code; and
- (15) All other applicable local, state, and federal codes and regulations.

(P) Taxes and assessments. To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of an applicant's use or occupation of the right of way, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.

(Q) Setbacks for Visibility and Access. Any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure must be setback from intersections, alleys and driveways and placed in locations where it will not obstruct motorists' sightlines or pedestrian access, as determined by the City Manager.

(R) Obstructions. Any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure shall not obstruct any:



(1) Worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;

(2) Access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop (including, without limitation, bus stops, streetcar stops, and bike share stations);

(3) Worker access to above ground or underground infrastructure owned or operated by any public or private utility agency;

(4) Fire hydrant access;

(5) Access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the right of way; or

(6) Access to any fire escape.

(S) No placement of any small cell facility or wireless support structure shall necessitate tree trimming, cause removal of, or otherwise damage any tree located within the city right of way or a designated utility easement.

#### **§99.08 SAFETY REQUIREMENTS**

(A) Prevention of failures and accidents. Any person who owns a small cell facility and/or wireless support structure sited in the right of way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

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

(C) Surety bond or equivalent financial tool for cost of removal. All owners must procure and provide to the City a bond, or must provide proof of an equivalent financial mechanism, to specifically cover the cost of removal of unused or abandoned small cell facilities and/ or wireless support structures or damage to City property caused by an operator or its agent of each small cell facility and/ or wireless support structure in case the City has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

#### **§99.09 RECOVERY OF COSTS**

(A) Application processing fee. For processing an application for consent, the City may charge a fee for each small cell facility and wireless support structure requested as prescribed under section 4939.0316 of the Ohio Revised Code and as listed in Chapter 37: General Fee Schedule.

(B) Annual collocation fee. For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the City and located in the right of way, the City may charge an annual fee as prescribed in 4939.022 of the Ohio Revised Code and as listed in Chapter 37: General Fee Schedule.

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

#### **§99.10 NONCONFORMITY**

A nonconforming small cell facility and/or wireless support structure shall immediately lose its nonconforming designation and must be brought into compliance with all of the provisions of this Chapter, and all other applicable City laws and ordinances or be removed if any of the following conditions are present:

(A) The nonconforming small cell facility and/or wireless support structure or a part of the nonconforming small cell facility and/or wireless support structure is altered, modified, relocated, replaced, or changed in any manner whatsoever;

(B) The nonconforming small cell facility and/or wireless support structure is damaged or deteriorated and requires any process of reconstruction, repair, maintenance, or restoration, and the cost of said reconstruction, repair, maintenance, or restoration exceeds fifty percent of the small cell facility and/or wireless support structure's replacement cost;

(C) The nonconforming small cell facility and/or wireless support structure is abandoned.

#### **§99.11 REVOCATION**

The following are grounds for revocation or denial of approval:

(A) The intentional provision of materially misleading information by the applicant (the provision of information is considered "intentional" where the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence);

(B) The failure to comply with any condition of approval, order, or other applicable law, rule, or regulation which may jeopardize the public health, safety, and welfare and for which a reasonable time period has been provided for the permittee to remedy noncompliance;

(C) The site, structure or operation is otherwise not in compliance with any other provision(s) of applicable law;

(D) The subject site or use is otherwise not in compliance due to incomplete work or projects, or is not in compliance due to unperformed or slow to perform work as part of an open permit.

## **§99.12 APPEALS**

(A) The Board of Zoning Appeals shall hear and decide upon appeals where it is alleged that there is an any written decision made by the City Manager in the administration or enforcement of this Chapter.

(B) A complete written appeal shall be filed by the appellant within thirty (30) days of the date of the written decision of the City Manager, or the appeal shall become void. The appeal shall be filed with the Board of Zoning Appeals. The written appeal shall:

(1) Cite specific provisions of this Chapter that are alleged to have been interpreted in error or the specific action being appealed and the grounds on which the appeal is being made;

(2) Include an application fee for the appeal in an amount set specified in Chapter 37: General Fee Schedule.

(3) Include such other information as may be reasonably required to render a decision;

(4) A statement as to why the appellant has standing as an aggrieved party to pursue the appeal by a statement of the way in which the written decision adversely affects the appellant.

(C) Upon receipt of an appropriately completed appeal application, the City Manager shall transmit to the Board of Zoning Appeals all documentation constituting the record upon which the written decision(s) being appealed were based.

(D) Upon receipt of an appropriately completed appeal application, the Board of Zoning Appeals shall set a time and place for a hearing on the appeal. The hearing shall be commenced after an appeal has been filed. Written notice of the hearing shall be sent to the aggrieved party at least ten (10) days prior to the hearing. The failure of delivery of such notice, however, shall not invalidate any subsequent proceedings. The aggrieved party or its representative may appear and be heard at the hearing, and present any evidence the party desires in support of its position.

(E) The Board of Zoning Appeals may affirm, reverse, or modify, in whole or in part, the decision appealed from, and to that end, the Board of Zoning Appeals shall have all the powers of the City Manager with respect to such decision. The concurring vote of a majority of the members of the Board of Zoning Appeals shall be necessary to reverse or modify any decision of the City Manager under this Chapter. The Board of Zoning Appeals shall render a written decision on the appeal without unreasonable delay after the close of the hearing, and in all cases within thirty (30) days after the close of the hearing.

(F) The filing of an appeal shall stay any further administrative action in regards to the written decision being appealed until a decision on the appeal is rendered by the Board of Appeals.

(G) The City Manager shall maintain a complete record of all actions of the Board of Zoning Appeals with respect to appeals.

(H) The Board of Zoning Appeals shall not be required to hear any case that has been the subject of an appeal during the previous twelve (12) months, unless substantial new evidence, critical to the case, becomes available.

(I) Appeals from the Board of Appeals in their decision on appeals applications shall be to the county court of common pleas, as provided by state statutes.

### **§99.13 SEVERABILITY**

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

### **§99.99 PENALTY**

(A) Any person in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a misdemeanor of the first degree each day during the period such violation continues.

(B) If any utility installation is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the City Manager, in addition to other remedies, may institute in the name of the City any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such utility installation, and/or to prevent any illegal act, conduct, business, or use in or about such utility installation.

(C) The City Manager is authorized to make requests and to issue orders regarding utility installations in the right of way for the purpose of public safety and compliance with this chapter of the City of West Carrollton, Ohio Code of Ordinances. The City Manager is also authorized to conduct visual and external inspections of utility installations in the right of way at any time and shall make efforts to coordinate with the provider responsible for a utility installation for any internal inspection of the relevant equipment.