

Repeal Ordinance 2021-2

ARTICLE 20 - SMALL CELL WIRELESS FACILITIES

20.925 - Small cell wireless facilities.

(a) *Definition.* For purposes of this section, the following words, terms and phrases shall be defined as follows:

Act means Public Act 365 of 2018, as amended, the Small Cell Wireless Communications Facilities Deployment Act.

Co-locate means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Co-location" has a corresponding meaning. Co-locate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

Public right-of-way or *ROW* means the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

- (i) A private right-of-way.
- (ii) A limited access highway.
- (iii) Land owned or controlled by a railroad as defined in section 109 of the Railroad Code of 1993, 1993 PA 354, MCL 462.109.
- (iv) Railroad infrastructure.

Small cell wireless facility means a wireless facility that meets both of the following requirements:

- (i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
- (ii) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: 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.

Utility pole means a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements in section (f) of this ordinance and is designed to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

Wireless facility means equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include any of the following:

- (i) The structure or improvements on, under, or within which the equipment is co-located.
- (ii) A wireline backhaul facility.

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

Wireless infrastructure provider means any person, including a person authorized to provide telecommunications services in this state but not including a wireless services provider, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures and who, when filing an application with the City under this section, provides written authorization to perform the work on behalf of a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider. Wireless provider does not include an investor-owned utility whose rates are regulated by the MPSC.

Wireless services means any services, provided using permitted or unpermitted spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

Wireless services provider means a person that provides wireless services.

Wireless support structure means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

All other terms and phrases used herein shall be defined consistent with the Act.

- (b) *Permit required.* A wireless provider may not co-locate a small cell wireless facility or install, modify, or replace a utility pole or wireless support structure on which a small cell wireless facility will be co-located within the public right-of-way without first applying for and receiving a small cell wireless permit from the City in a form and subject to such terms and conditions as are acceptable to the City.
- (c) *Permitting process.* The processing of an application for a permit under this section is subject to all of the following:
- (1) An application in such form as prepared by the City Clerk or City Manager from time to time shall be completed and submitted as set forth in this section.
 - (2) The City may require an applicant to provide information and documentation to enable the City to make a compliance determination with regard to the criteria in this section involving, without limitation, subsection (d)
 - (3) The City may also require a certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.
 - (3) If the proposed activity will occur within a shared ROW or an ROW that overlaps another ROW, a wireless provider shall provide, to each affected jurisdiction, to which an application for the activity is not submitted, notification of the wireless provider's intent to locate a small cell wireless facility within the ROW. The City may require proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.
 - (4) The City may require an applicant to attest that the small cell wireless facilities will be operational for use by a wireless services provider within 1 year after the permit issuance date, unless the City and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site.
 - (5) An applicant may, at the applicant's discretion, file a consolidated application and receive a single permit for the co-location of up to 20 small cell wireless facilities within the City. The small cell wireless facilities within a consolidated application must consist of substantially similar equipment and be placed on similar types of utility poles or wireless support structures. The City may approve a permit for 1 or more small cell wireless facilities included in a consolidated application and deny a permit for the remaining small cell facilities.
 - (6) The application for a permit under this section shall be accompanied by an application fee as set by resolution of the City from time to time.

- (7) The permit application shall be accompanied by a map(s) for any proposed small cell wireless facilities which shall be scale, labeled with streets, and contain sufficient detail to precisely identify the proposed small cell wireless facilities' surroundings. Where applicable, the required map(s) shall include and identify any requested pole height(s), all attached detailed drawings of any attachment.
- (8) The permittee shall field-stake all proposed locations for small cell wireless facilities which shall be subject to the advance approval of the Clare County Road Commission and/or the Michigan Department of Transportation as applicable. All approved small cell wireless facilities' locations shall be on a per pole/equipment/other basis.
- (9) Once precise locations have been approved, the permittee shall provide latitude and longitude coordinates for the small cell wireless facilities' locations to the City's engineering department as well as detailed as-built drawings within 90 days of the completion of installation.
- (10) The permittee shall be responsible to obtain such other permits and approvals as otherwise required by law.

(d) *Determination.*

- (1) Within 25 days after receiving an application, the City shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically identify all missing documents or information.
- (2) Upon receipt of a complete application, the City shall approve or deny the application and notify the applicant in writing within the following period of time after the completed application is received:
- (A) For an application for the co-location of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:
- (i) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
 - (ii) Add 15 days if, before the otherwise applicable 60-day or 75-day time period elapses, the City notifies the applicant in writing that an extension is needed and the reasons for the extension.
- (B) For an application for a new or replacement utility pole that meets the height requirements of section 13(5)(a) of the Act and associated small cell facility, 90 days, subject to the following adjustments:
- (i) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
 - (ii) Add 15 days if, before the otherwise applicable 90-day or 105-day time period elapses, the City notifies the applicant in writing that an extension is needed and the reasons for the extension.

If the City fails to comply with this subsection, an application otherwise complete is considered to be approved subject to the condition that the applicant provide the City not less than 7 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval and the applicant shall be responsible to comply with all provisions of this section and the Act.

The City and an applicant may extend a time period under this subsection by mutual agreement.

- (3) The City may deny a completed application for a proposed co-location of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in section 13(5)(a) of the Act if the proposed activity would do any of the following:
- (A) Materially interfere with the safe operation of traffic control equipment.
 - (B) Materially interfere with sight lines or clear zones for transportation or pedestrians.
 - (C) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
 - (D) Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of the City.

- (E) With respect to drainage infrastructure under the jurisdiction of the City, either of the following:
 - (i) Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
 - (ii) Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.
- (F) Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by the City by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.
- (G) Fail to comply with applicable codes.
- (H) Fail to comply with any provision of this section.
 - (I) Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and non-discriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the City.
- (4) Within 1 year after a permit is granted, a wireless provider shall complete co-location of a small cell wireless facility that is to be operational for use by a wireless services provider, unless the City and the applicant agree to extend this period or the delay is caused by the lack of commercial power or communications facilities at the site. If the wireless provider fails to complete the co-location within the applicable time, the permit is void, and the wireless provider may reapply for a permit.
- (5) Approval of an application authorizes the wireless provider to do both of the following:
 - (A) Undertake the installation or co-location.
 - (B) Subject to relocation requirements that apply to similarly situated users of the ROW and the applicant's right to terminate at any time, maintain the small cell wireless facilities and any associated utility poles or wireless support structures covered by the permit for so long as the site is in use and in compliance with the initial permit under this act.
- (6) The City may propose an alternate location within the ROW or on property or structures owned or controlled by the City within 75 feet of the proposed location to either place the new utility pole or co-locate on an existing structure. The applicant shall use the alternate location if, as determined by the applicant, the applicant has the right to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs. The City may request written confirmation of any decision rendered by the applicant under this subsection and the specific basis for the same.
- (7) Nothing herein shall prohibit the City from requiring a separate ROW access permit for work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.
- (8) As a condition of the issuance of a permit, the applicant shall obtain and maintain a bond, in the amount of \$1,000.00 per small cell wireless facility, in a form reasonably satisfactory to the City, for the small cell wireless facilities as applicable to similarly situated users of the ROW for one or more of the following purposes:
 - (A) To provide for the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determines should be removed to protect public health, safety, or welfare.
 - (B) To repair the ROW as provided under the Act.
 - (C) To recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the authority of the noncompliance.
- (9) It is a condition of any permit issued under this section that:
 - (A) A wireless provider, with respect to a small cell wireless facility, a wireless support structure, or a utility pole, shall defend, indemnify, and hold harmless the City and its officers, agents, and employees against any

claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of these. A wireless provider has no obligation to defend, indemnify, or hold harmless the City, or the officers, agents, or employees of the City or governing body against any liabilities or losses due to or caused by the sole negligence of the City or its officers, agents, or employees.

- (B) A wireless provider, with respect to a small cell wireless facility, a wireless support structure, or a utility pole, shall obtain insurance, in an amount and of a type reasonably satisfactory to the City naming the City and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the City's insurance coverage and limit requirements by self-insurance. To the extent it self-insures, a wireless provider is not required to name additional insureds under this subsection. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the City evidence demonstrating, to the City's satisfaction, the wireless provider's financial ability to meet the City's insurance coverage and limit requirements.

It is the policy of the City to encourage the co-location of small cell wireless facilities first, outside of public rights-of-way and, secondarily, within the public rights-of-way. The co-location of uses shall be a condition of approval of any permit granted for a new wireless support structure or utility pole in the public right-of-way; provided, however, that the co-location requirement may be waived if the pole or support structure is disguised or stealthed so as to blend with the immediate environment (e.g., streetlights, power poles, etc.).

- (e) *METRO Act permit.* No person shall install or operate "telecommunications facilities," as defined in the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended (the "act") without first obtaining a permit in accordance with that act from the City, including any part of a small cell wireless facility, utility pole, or wireless support structure constituting telecommunication facilities.
- (f) *Design parameters.* The following minimal design parameters shall apply to small cell wireless facilities, utility poles and wireless support structures in the City's public rights-of-way:
- (1) A wireless provider may, as a permitted use not subject to zoning review or approval, but still subject to approval by the City under this section, co-locate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW consistent with the following:
 - (A) A utility pole in the ROW installed or modified on or after the effective date of the Act shall not exceed 40 feet above ground level, unless a taller height is agreed to by the City consistent with all applicable laws.
 - (B) A small cell wireless facility in the ROW installed or modified after the effective date of the Act shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is co-located.
 - (2) Such structures and facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel or public safety on the ROW or obstruct the legal use of the City's ROW or uses of the ROW by other utilities and communications service providers.
 - (3) A wireless provider may co-locate a small cell wireless facility or install, construct, maintain, modify, operate, or replace a utility pole that exceeds the height limits under subsection (1), or a wireless support structure, in, along, across, upon, and under the ROW only upon issuance of a permit in accordance with this Section and upon receiving zoning approvals required by the City.
 - (4) The following design and concealment measures shall apply to the co-location of any small cell wireless facility or utility pole in an historic, residential, or downtown district:
 - (A) Equipment on a supporting structure may not exceed an aggregate width of four feet (centered on pole) and

shall be secured a minimum of ten feet from the ground surface or 18 feet where equipment may overhang the back of curb line. Ground level equipment or shelters are not permitted.

- (B) Small cell wireless facilities shall be located no closer than 18 inches from an existing sidewalk/face of curb or 18 inches from a proposed future sidewalk/face of curb location.
- (C) Small cell wireless facilities shall be located no closer than ten feet from any driveway.
- (D) Small cell wireless facilities shall be located in line with a side lot line and not in front of a residence.
- (E) Unless otherwise required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or applicable codes poles shall either maintain a galvanized silver, gray or concrete finish or, subject to any applicable standards of the FAA, FCC or such codes, be painted a neutral color so as to reduce visual obtrusiveness.
- (F) At all pole sites related equipment shall use materials, colors, textures, screening, and landscaping that will blend the facilities to the natural setting and environment to the extent reasonably practical.
- (G) All poles shall be of monopole design and construction unless the City approves an alternate design. Disguising or stealthing poles is encouraged.

Any such requirements shall not have the effect of prohibiting any wireless provider's technology.

(5) In the event that the wireless provider's application includes facilities intended to be installed in an area that otherwise is designated solely for underground or buried cable and utility facilities, this provision shall apply. A wireless provider shall comply with any City requirements that prohibit communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities if each of the following apply:

- (A) The City has required all cable and utility facilities, other than City poles if any, along with any attachments, or poles used for street lights, traffic signals, or other attachments necessary for public safety, to be placed underground by a date that is not less than 90 days before the submission of the wireless provider's application.
- (B) The City does not prohibit the replacement of poles owned by the City by a wireless provider in the designated area.

(g) *Modification of design parameters.* Upon the written request of an applicant for a permit, the Downtown Development Authority and/or the City may modify or waive the design parameters of subsection (f)(4) and (f)(5) in its discretion following a hearing and based on its review of factors affecting the public health, safety and welfare including, but not limited to, the following: the presence of existing poles or other structures or equipment in the immediate vicinity; the ability to reasonably comply with the design parameters set forth in subsection (f)(4) and (f)(5); the visual and aesthetic impact of the proposed pole, antenna or facilities on the adjacent area; the existing and planned character of the adjacent area; public comment; the scale and scope of the poles, antennas or facilities relative to the existing character of the area; whether granting the modification will adversely impact public safety; and the recommendations of City department heads (if any). Following its review, the Downtown Development Authority and/or the City may grant, deny or grant with conditions a request to modify or waive the design parameters and shall provide its decision and the basis for the same to the applicant in writing. All applications for a waiver or modification of the design parameters as set forth herein shall be addressed in a uniform and nondiscriminatory manner. The applicant shall be responsible to pay all costs of the City associated with the request to modify or waive the design parameters.

(h) *Repair of ROW.* As a condition to the issuance of a permit under this section, a wireless provider is required to repair all damage to the ROW directly caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or

wireless support structures in the ROW and to return the ROW to its functional equivalent before the damage. If the wireless provider fails to make the repairs required by the City within 60 days after written notice, the City may make those repairs and charge the wireless provider the reasonable, documented cost of the repairs.

- (i) *Discontinuance of Use.* Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify the City in writing. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. The City may impose reasonable and nondiscriminatory requirements and specifications for the wireless provider to return the property to its pre-installation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the City may complete the removal and assess the costs of removal against the wireless provider. A permit under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.
- (j) *Revocation of Permit.* The City may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of subsection (d) (3).
- (k) *Compliance with applicable law.* The permittee shall be responsible to comply with all applicable legal requirements and to obtain any permits or approvals otherwise required by law relative to the installation or operation of small cell wireless facilities in the City's public rights-of-way (e.g., electrical permits). The City, in reviewing and authorizing a permit under the act and/or a permit referred to in this section, and the permittee, in the establishment and operation of any small cell wireless facilities, shall comply with all applicable federal and state laws.
- (l) *Fees.* Fees for the permits as authorized under the Act shall be as provided for in the Act or those documents and as periodically authorized by resolution of the City Commission, provided, however, that for installations of utility poles designed to support small cell wireless facilities or co-locations of small cell wireless facilities installed and operational in the ROW before the effective date of the Act, the fees, rates, and terms of an agreement or ordinance for use of the ROW remain in effect subject to the termination provisions contained in the agreement or ordinance.

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