

AN ORDINANCE
ENTITLED 19-118

AN ORDINANCE ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE CITY OF ALBANY, GEORGIA'S PUBLIC RIGHTS OF WAY; ESTABLISHING A PROCESS FOR REQUIRED PERMITS; REPEALING PRIOR ORDINANCES IN CONFLICT AND FOR OTHER PURPOSES.

WHEREAS, the City of Albany ("City") desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of its Right of Way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access and capacity to advanced technology, broadband and first responder services to home, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes the small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in the public Right of Way; and

WHEREAS, the City intends to fully comply with state and federal law to the extent it preempts or conflicts with local municipal control,

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Albany, Georgia, and it is hereby ordained by authority of same:

**ARTICLE I
PURPOSE AND COMPLIANCE**

Section 1.1 O.C.G.A. § 32-4-92(a)(10) and 32-4-42(6) authorizes the City of Albany, Georgia (the "City"), to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the City. Further, 47 U.S.C.A. § 253(c) provides that the City has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act., O.C.G.A. Title 36, Chapter 66C (the "SWFAA"), addresses the placement of small wireless facilities in the public rights of way of the City.

Section 1.2 The City finds it is in the best interest of the City and its residents and businesses to establish requirements, specifications and reasonable conditions regarding placement of small wireless facilities, poles in the public rights of way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents

and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

Section 1.3 The objective of this Ordinance is to (i) implement the SWFAA and (ii) ensure use of the public rights of way is consistent with the design, appearance and other features of nearby land uses, protects the integrity of historic, cultural and scenic resources and does not harm residents' quality of life.

Section 1.4 The objective of this Ordinance is to establish nondiscriminatory policies and procedures for use of the City right of way and more specifically the placement of small wireless facilities in right of way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City right of way and the City as a whole. In enacting this Ordinance, the City is establishing uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated poles in the City right of way, including without limitation, to: 1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places; 2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; 3) prevent interference with the facilities and operations of facilities lawfully located in right of way or public property; 4) protect against environmental damage, including damage to trees; 5) preserve the character of historic districts or areas with decorative poles; and 6) facilitate rapid deployment of small cell facilities to provide the benefits of wireless services.

ARTICLE II DEFINITIONS

Section 2.1 Unless defined below, terms used in this Ordinance shall have the meanings given them in O.C.G.A. § 36-66C-2.

As used in this Ordinance, the following terms have the following meanings:

(a) "Administrative review" means review of an application by the City relating to the review and issuance of a Permit, including review by City staff, to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Ordinance. The application process/Administrative Review is set forth in Article III and shall be approved except as provided in subsection 11 of Section 3.4.

(b) "Antenna" means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves. Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

(c) “Applicable Codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the State of Georgia or the City or are otherwise applicable in the City.

(d) “Applicant” means any person that submits an application.

(e) “Application” means a written request submitted by an applicant to the City for a permit to: (i) collocate a small wireless facility in a right of way; or (ii) install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be located.

(f) “Authority Pole” means a pole owned, managed, or operated by or on behalf of the City. Such term shall not include poles, support structures, electric transmission structures, or equipment of any type owned by an electric supplier.

(g) “Collocate” or “Collocation” means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.

(h) “Communications Facility” means the set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.

(i) “Communications Service Provider” means a provider of communications services.

(j) “Communications Services” means cable service as defined in 47 U.S.C. § 522(6); telecommunications service as defined in 47 U.S.C. § 153(53); information service as defined in 47 U.S.C. Section 153(24), as each such term existed on January 1, 2019; or wireless services.

(k) “Consolidated Application” means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.

(l) “Decorative Pole” means an authority pole that is specially designed and placed for aesthetic purposes.

(m) “Electric Supplier” means any electric light and power company subject to regulation by the Georgia Public Service Commission, any electric membership corporation furnishing retail service in this state, and any municipality which furnishes such service within this state.

(n) “Eligible Facilities Request” means an eligible facilities request as set forth in 47 C.F.R. § 1.40001(b)(3), as it existed on January 1, 2019.

(o) “FCC” means the Federal Communications Commission of the United States.

(p) “Fee” means a one-time, nonrecurring charge based on time and expense.

(q) “Historic District” means: (i) any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1; (ii) any area designated as a historic district under Article 2 of Chapter 10 of Title 44, the Georgia Historic Preservation Act; or (iii) any area designated as a historic district or property by law prior to April 26, 2019.

(r) “Law” means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.

(s) “Micro Wireless Facility” means a small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.

(t) “Permit” means a written authorization, in electronic or hard copy format, required to be issued by the City to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.

(u) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(v) “Pole” means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.

(w) “Rate” means a recurring charge.

(x) “Reconditioning Work” means the activities associated with substantially painting, reconditioning, improving, or repairing authority poles.

(y) “Replace,” “Replacement” or “Replacing” means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. § 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.

(z) “Replacement Work” means the activities associated with replacing an authority pole.

(aa) “Right of Way” means, generally, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road; provided, however, that such term shall apply only to property or an interest therein that is under the ownership or control of the City and shall not include property or any interest therein acquired for or devoted to an interstate highway or the public rights, structures, sidewalks, facilities, and appurtenances of buildings for public equipment and personnel used for or engaged in administration, construction, or maintenance of public roads or research pertaining thereto or scenic easements and easements of light, air, view and access.

(bb) “Small Wireless Facility” means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters; concealment elements; telecommunications demarcation boxes; grounding equipment; power transfer switches; cut-off switches; and vertical cable runs for connection of power and other services. Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

(cc) “State” means the State of Georgia.

(dd) “Support Structure” means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

(ee) “Wireless Infrastructure Provider” means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.

(ff) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.

(gg) “Wireless Services” means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

(hh) “Wireless Services Provider” means a person that provides wireless services.

(ii) “Wireline Backhaul Facility” means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

Section 2.2 In the event that any federal or state law containing definitions used in this Ordinance is amended, the definition in the referenced section, as amended, shall control.

ARTICLE III PERMITS

Section 3.1 Please note an applicant which has not held a meeting that complies with O.C.G.A. §36-66C-3(b) shall meet with the City’s Director of Engineering at least 30 days before submitting applications under Code Section 36-66C-3(b) to inform the City in good faith when such applicant expects to commence deployment of small wireless facilities and poles within such authority pursuant to this chapter, the number of small wireless facilities and poles it expects to deploy during the 24 months after commencement, and the expected timing of such deployments. All documents or other information provided by the applicant in the course of, or in association with, any such meetings shall be presumed to be confidential and proprietary and a trade secret as such term is defined in O.C.G.A. §10-1-761, shall be subject to exemption from disclosure under state and federal law, and shall not be subject to disclosure under O.C.G.A. Article 4 of Chapter 18 of Title 50.

Section 3.2 A permit is required to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).

Section 3.3 Any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way shall submit an application to the City’s Director of Engineering for a permit. Applications are available from the Engineering Department. [The application template is included as Exhibit A to this Ordinance]. Any material change to information contained in an application shall be submitted in writing to the City’s Director of Engineering within 30 days after the events necessitating the change.

Section 3.4 Each application for a permit shall include the maximum application fees permitted under O.C.G.A. § 36-66C-5(a)(1), (a)(2) and (a)(3) which are expressly incorporated herein by reference. Such maximum application fees shall automatically increase 2.5 percent on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b). Applications for permits will be reviewed as per O.C.G.A. §36-66C-7. Within 20 days of receipt of a written application, the City shall:

- 1) Notify the applicant in writing of the commencement and completion dates of any widening, repair, reconstruction, or relocation of the applicable right of way that is

scheduled to commence, or is anticipated in good faith to commence, within 24 months after the application is filed;

- 2) Notify the applicant, based on the City's good faith preliminary review of the information provided in the application, of any aspect of the application that appears to be grounds for the City's denial of the application pursuant to subsection 11 of this Section 3.4; and
- 3) Determine whether the application is complete and inform the applicant of its determination in writing. If the City determines that an application is incomplete, it shall specifically identify to the applicant in writing all missing information within such 20 day period; otherwise, the application is deemed completed. If the City identifies missing information to the applicant in writing, the applicant may submit such missing information to the City within 20 days of receipt of notification in writing from the City that the application is incomplete without paying any additional application fee, and any subsequent review of the application by the City for completeness shall be limited to the previously identified missing information. If the City determines that an application remains incomplete, or if the City determines that the applicant has made material changes to the application other than to address the missing information identified by the City, the City shall notify the applicant of such determination in writing within ten days of receipt of the resubmission of the written application, and absent an agreement to the contrary between the City and the applicant that is confirmed by email or other writing, such notice shall constitute a denial of the application. If the City does not provide such written notification to the applicant within this ten-day period, the application shall be deemed complete.
- 4) The City shall make its final decision to approve or deny the application within 30 days of the written determination that the application is complete or when the application is deemed complete under subsection 3 of this Section 3.4, whichever is earlier, for a collocation, and within 70 days of the written determination that the application is complete or when the application is deemed complete under subsection 3 of Section 3.4, whichever is earlier, for the installation, modification, or replacement of a pole or decorative pole.
- 5) A decision to deny an application pursuant to Section 3.4 shall be in writing, shall identify all reasons from the denial, and shall identify the provision of applicable codes or other standards applicable pursuant to this Ordinance on which the denial was based. The decision to deny shall be sent to the applicant contemporaneously. The review period shall run until the written decision is delivered to the applicant in accordance with O.C.G.A. §36-66C-7(s).
- 6) If the City fails to act on an application within the review period provided for in O.C.G.A. §36-66C-7(c), the applicant may provide the City written notice that the time period for acting has lapsed, and the City shall then have 20 days after receipt of such notice to render its written decision. The application shall be deemed

approved by passage of time and operation of law if the City does not render its written decision within such 20 days.

- 7) An applicant may, at the applicant's discretion and subject to the consolidated application requirements and processes under Article 12, file a consolidated application.
- 8) Notwithstanding any other provision of this Ordinance and to the extent that an application constitutes an eligible facilities request, the City shall not deny the application and shall approve the application within 60 days according to the procedures established under 47 C.F.R. 1.40001(c).
- 9) Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the right of way as a permitted use of accordance with Article 6, subject to applicable codes and the following requirements:
 - a) Each such new, modified, or replacement pole installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level;
 - b) Each such new, modified, or replacement pole installed in the right of way not in historic district or in an area zoned primarily for residential use shall not exceed the greater of:
 - i. Fifty feet above ground level; or
 - ii. Ten feet greater in height above ground level than the tallest existing pole in the same City right of way in place as of January 1, 2019, and located within 500 feet for the new proposed pole; and
 - c) New small wireless facilities in the right of way shall not exceed:
 - i. For a collocation on an existing pole or support structure, more than ten feet above the existing pole or support structure; or
 - ii. For a collocation on a new, modified, or replacement pole under this paragraph (a) or (b) of this subsection 9, the height limit provided in such paragraphs.
- 10) A. A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit communications service providers and electric service providers from installing poles in a right of way in an area designated solely for underground or buried facilities of communications service providers and electric service providers where the City:
 - a) Has required all such facilities other than light poles and attachments to be placed underground and all such undergrounding has been completed prior to the submission of the application, or, for rights of way where such facilities other than light poles and attachments have not been deployed, has in effect a

reasonable and nondiscriminatory zoning or development ordinance or regulation that requires such facilities other than light poles and attachments to be placed underground;

- b) Does not prohibit the replacement of light poles or the collocation of small wireless facilities in the designated area; and
- c) Permits wireless providers to seek a waiver of the underground requirements for the placement of a new pole to support small wireless facilities, which waivers shall be addressed in a nondiscriminatory manner and consistent with applicable law.

B. As to any undergrounding requirements adopted by the City, the City shall:

- a) Allow a wireless provider to maintain in place any previously collocated small wireless facilities subject to any applicable pole attachment agreement; or
- b) Either allow the wireless providers to replace the pole associated with previously collocated small wireless facilities at the same location or propose an alternate location within 50 feet of the prior location, which the wireless provider shall use unless such alternate location imposes technical limits or significant additional costs.

11) The City shall approve an application for permitted uses described in subsection (a) of O.C.G.A. §36-66C-6 unless the requested collocation of a small wireless facility or the requested installation, modification, or replacement of a pole or decorative pole:

- a) Interferes with the operation of traffic control equipment;
- b) Interferes with sight lines or clear zones for transportation or pedestrians;
- c) Fails to comply with the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et. seq., or similar laws of general applicability regarding pedestrian access or movement;
- d) Requests that ground-mounted small wireless facility equipment be located more than 7.5 feet in radial circumference from the base of the pole, decorative pole, or support structure to which the small wireless facility antenna would be attached, provided that the City shall not deny the application if a greater distance from the base of the pole, decorative pole, or support structure is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;
- e) Fails to comply with applicable codes;

- f) Fails to comply with the maximum limitations set forth in subsection 9 of this Section 3.4 or the requirements of subsection 10 of this Section 3.4;
 - g) With respect to an application to install a pole or decorative pole, interferes with the widening, repair, reconstruction, or relocation of a public road or highway by the City or the Department of Transportation that has been advertised for bid and scheduled for completion within six months after the application is filed;
 - h) With respect to an application to install a pole or decorative pole, interferes with a public works construction project governed by O.C.G.A. Chapter 91 Title 36 and scheduled for completion within six months after the application is filed;
 - i) Fails to comply with O.C.G.A. §36-66C-10, 36-66C-11 and 36-66C-12
 - j) Fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements; or
 - k) Fails to comply with laws of general applicability that address the occupancy or management of the right of way and that are not otherwise inconsistent with this Ordinance.
- 12) A) A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Ordinance and shall not create a property right or grant authorization or license to the applicant to impinge upon the rights of other persons that may already have an interest in the right of way.
- B) Collocation, installation, modification, or replacement for which a permit is issued under this Ordinance shall be completed within six months after issuance, provided that an extension shall be granted for up to an additional six months upon written request made to the City before the end of the initial six-month period if a delay results from circumstances beyond the reasonable control of the applicant. Issuance of a permit authorizes the applicant to:
- i. Undertake the collocation, installation, modification, or replacement approved by the permit; and
 - ii. Operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of not less than ten years, which shall be renewed for equivalent durations so long as the applicant is in compliance with the criteria set forth in subsection 11 of this Section 3.4, subject to the relocation requirements described in subsection 13 of this Section 3.4 and the applicant's right to terminate at any time.

13) A. If, in the reasonable exercise of police powers, the City requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of poles, support structures, or small wireless facilities is required as a result of a public project a wireless provider shall relocate poles and support structures that such wireless provider has installed in the right of way for the collocation of small wireless facilities pursuant to this Ordinance at no cost to the City in the event that such poles and support structures are found by the City to unreasonably interfere with the widening, repair, reconstruction, or relocation project or the public project. If widening, repair, reconstruction, or relocation is required as a condition or result of a project by a person other than the City, such person shall bear the cost of relocating such poles or support structures and any communications facilities on such poles or support structures. The wireless provider shall relocate the poles or support structures:

- i. By the date designated in a written notice from the City that contains a good faith estimate by the City of the date by which the City intends to commence work, whenever the City has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement or operations in or upon the right of way so long as the same time frames are applied to all utilities in the right of way; provided, however, that the date designated for relocation shall be at least 45 days after the City provides the written notice to the wireless provider; or
- ii. Within the time frame that the wireless provider estimates in good faith is reasonably needed to complete the relocation, so long as the wireless provider provides the City written notice of its good faith estimate within 30 days following receipt of the written notice provided by the City pursuant to paragraph A of this subsection 13 and explains in detail why such wireless provider cannot reasonably complete the relocation by the date designated in the City's written notice.

14) A) The wireless provider shall reasonably cooperate with the City to carry out reconditioning work activities in a manner that minimizes interference with the wireless provider's approved use of the facility.

B) The City shall use reasonable efforts to provide the wireless provider with written notice of reconditioning work at least 120 days before such reconditioning work begins. Upon receiving such notice, it shall be the wireless provider's sole responsibility to provide adequate measures to cover, remove, or otherwise protect wireless provider's communications facility from the consequences of the reconditioning work, including but not limited to paint and debris fallout. The City reserves the right to require the wireless provider to remove all of the wireless provider's communications facilities from the City pole and surrounding premises during reconditioning work, provided that the requirement to remove such is contained in the written notice required by this subsection 14. All costs associated with the protection measures, including temporary removal, shall be the sole responsibility of the wireless provider. If the City fails in good faith to give notice within at least 120 days, it shall not affect the City's rights under this subsection 14. In all cases, as much notice as possible shall be provided, but less than 30 days' notice shall be

prohibited. The City shall provide the wireless provider with a date by which its equipment must be protected or removed.

C) The wireless provider may request a modification of the City procedures for carrying out reconditioning work in order to reduce interference with the wireless provider's operation of its communications facility. If the City agrees to the modification, the wireless provider shall be responsible for all reasonable incremental costs related to the modification.

D) The City shall provide the wireless provider with at least 120 days written notice of any replacement work before the City may remove the wireless provider's communications facilities. The City shall also promptly notify the wireless provider when the City poles have been replaced and the wireless provider can reinstall its equipment. During the replacement work, the wireless provider may maintain a temporary communications facility on the property, or after approval by the City on any land owned or controlled by a City in the vicinity of the property. If the property will not accommodate the wireless provider's temporary communications facility or if the parties cannot agree on a temporary location, the wireless provider, at its sole discretion, shall have the right to suspend the applicable permit until the replacement pole is installed, upon 30 days' written notice to the City.

15) For any collocation on City poles in the right of way, the City shall provide a good faith estimate for any make-ready work necessary to enable the City pole to support the proposed facility, including replacement of the pole if necessary, within 60 days after receipt of a completed application requesting attachment to the City pole. Alternatively, the City may require the wireless provider to perform the make-ready work and notify the wireless provider of such within the 60 day period. If the wireless provider or its contractor performs the make-ready work, the wireless provider shall indemnify the City for any negligence by the wireless provider or its contractor in the performance of such make-ready work, the work shall not be deemed to violate Chapter 91 of Title 36 of the Georgia Code, and the work shall otherwise comply with applicable law. If the City opts to perform the make-ready work itself, the City shall complete the work, including the pole replacement, within 90 days of the receipt of written acceptance of the good faith estimate by the wireless provider. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the City. The City may require that the replacement City pole have the same functionality as the pole being replaced. If the City pole is replaced, the City shall operate City fixtures on the pole, and absent an agreement to the contrary between the City and the wireless provider that is confirmed in writing, the City shall take ownership of the new pole.

16) If the wireless provider fails to relocate a support structure or pole or fails to provide a written good faith estimate of the time needed to relocate a support structure or pole within the time period prescribed in subsection 13 of this Section 3.4, the City shall have the right and privilege, ten days or more after the wireless provider receives written notice from the City, to cut power to or move any support structure or pole located within the right of way,

as the City may determine to be necessary, appropriate, or useful in order to commence work on the public project.

17) A) If a wireless provider decides to abandon any small wireless facility, support structure, or pole, it shall notify the City in writing as soon as practicable, but no later than 30 days prior to abandonment. Following receipt of such notice, the City shall instruct the wireless provider in writing to remove all or any portion of the small wireless facility, support structure, or pole if the City determines that such removal will be in the best interest of public safety and welfare. If the wireless provider fails to remove the abandoned small wireless facility support structure, or pole within 90 days after such notice, the City may do so and recover the actual and reasonable expenses of doing so from with wireless provider, its successors, or its assigns, plus a penalty not to exceed \$500.00. The City may suspend the ability of the wireless provider, its successors, or its assigns, as applicable to receive any new permits from the City until the wireless provider, its successors, or its assigns, as applicable, have paid the amount assessed for such removal costs and the penalty assessed, if any; provided, however that the City shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction. Nothing in this Ordinance precludes the City from adopting reasonable and nondiscriminatory requirements that are not inconsistent with this subsection 17 with respect to the removal of abandoned small wireless facilities, support structures, or poles.

B) A small wireless facility that is not operated or a support structure or pole that is not utilized for a continuous period of 12 months shall be considered abandoned, and the owner of such small wireless facility, support structure, or pole shall remove such within 90 days after receipt of written notice from the City notifying such owner of such small wireless facility, support structure, or pole of the abandonment. The City shall send the notice by certified or registered mail, return receipt requested, to such owner at the last known address of such owner of the small wireless facility, support structure, or pole. If the owner does not provide written notice that the small wireless facility has not been out of operation or the support structure or pole has in fact been utilized for a continuous period of 12 months or does not remove such small wireless facility, support structure, or pole within the 90 day period, the City may remove or cause the removal of such small wireless facility, support structure, or pole pursuant to the terms of its support structure or pole attachment agreement for City poles or through actions provided for abatement of nuisances or by other law for removal and cost recovery.

18) If the City determines that a wireless provider's activity in a right of way pursuant to this Ordinance creates an imminent risk to public safety, the City may provide written notice to the wireless provider and demand that the wireless provider address such risk. If the wireless provider fails to reasonably address the risk within 24 hours of the written notice. The City may take or cause to be taken action to reasonably address such risk and charge the wireless provider the reasonable documented cost of such actions.

19) The City may require a wireless provider to repair all damage to a right of way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining small wireless facilities, poles, or support structures, in such right of way and to restore the right of way to its condition before the damage occurred pursuant to the competitively neutral and reasonable requirements and specifications of the City. If the wireless provider fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the damage within 90 days of receipt of written notice from the City, the City may, at its sole discretion, restore the right of way to such condition and charge the wireless provider its reasonable, documented cost of doing so, plus a penalty not to exceed \$500.00. The City may suspend the ability of the wireless provider to receive any new permits from the City until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

20) The City shall send any notice or decision require Chapter 66C of Title 66 of the O.C.G.A. by registered or certified mail, statutory overnight delivery, hand delivery, or email transmission. The decision or notice shall be deemed delivered upon email transmission, deposit into overnight mail or regular mail receptacle with adequate postage paid, or actual receipt if delivered by hand.

Section 3.5 Permits To Install a Pole or Replace a Decorative Pole:

(a) In order to receive a permit to install a pole or replace a decorative pole, the applicant must have determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which: (i) the applicant has the right to collocate subject to reasonable terms and conditions; and (ii) such collocation would not impose technical limitations or significant additional costs. The applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(b) The Engineering Department may deny an application for a permit upon any of the conditions identified in O.C.G.A. § 36-66C-7(j).

(c) For applications for new poles in the public right of way in areas zoned for residential use, the Engineering Department may propose an alternate location in the public right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the Engineering Department proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

Section 3.6 A permit issued under this ARTICLE III shall authorize such person to occupy the public rights of way to: (i) collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. § 36-66C-12; and (ii) install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(1) and (h)(2).

Section 3.7 Upon the issuance of a permit under this Ordinance, and on each anniversary of such issuance, every person issued a permit shall submit to the City the maximum annual payments permitted under O.C.G.A. § 36-66C-5(a)(4) and (a)(5); provided, however, that if such person removes its small wireless facilities from the public rights of way pursuant to O.C.G.A. § 36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual payment obligations under this section shall cease as of the date of the actual removal. The maximum annual payments shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

Section 3.8 Any person issued a permit shall pay the fees identified in O.C.G.A. § 36-66C-5(a)(6) and (a)(7), as applicable, to-wit:

- 1) An application fee for each application for the collocation of each small wireless facility on an existing pole of \$100 per small wireless facility;
- 2) An application fee for each application fee for each application for a replacement pole with an associated small wireless facility of \$250.00 per pole;
- 3) An application fee for each application for a new pole with an associated small wireless facility of \$1,000.00 per pole;
- 4) An annual right of way occupancy rate for the non-exclusive occupancy of the right of way by the applicant of:
 - a) \$100.00 per year for each small wireless facility collocated on any existing or replacement pole, including an existing or replacement City pole; or
 - b) \$200.00 per year for each new pole, other than a replacement pole, with an associated small wireless facility;
- 5) An annual attachment rate for collocations on City poles of \$40.00 per year per small wireless facility, which shall be nondiscriminatory regardless of the service provided by the collocating wireless provider;
- 6) A fee for make-ready work, as provided in subsection (15) of Section 3.4; and

- 7) Generally applicable nondiscriminatory fees for any permit required under generally applicable law; provided, however, that an applicant shall not be required to obtain or pay any fees for a building permit, as the permit issued pursuant to this Ordinance serves as a building permit for the applicable poles and small wireless facilities.

Section 3.9 The City may revoke a permit issued pursuant to this ARTICLE III if the wireless provider or its equipment placed in the public right of way under that permit subsequently is not in compliance with any provision of this Ordinance or the Georgia Streamlining Wireless Facilities and Antennas Act. Upon revocation, the City may proceed according to Section 3.10.

Section 3.10 If a wireless provider occupies the public rights of way without obtaining a permit required by this ARTICLE III or without complying with the SWFAA, then the City may, at the sole discretion of the City, restore the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider the reasonable, documented cost of the City in doing so, plus a penalty not to exceed \$1,000.00. The City may suspend the ability of the wireless provider to receive any new permits from the City under this ARTICLE III until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

Section 3.11 All accepted applications for permits shall be publically available subject to the limitations identified in O.C.G.A. § 36-66C-6(c).

Section 3.12 An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. § 36-66C-13.

Section 3.13 Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. § 36-66C-7(k)(2).

Section 3.14 Issuance of a permit authorizes the applicant to: (i) undertake the collocation, installation, modification or replacement approved by the permit and (ii) operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of ten (10) years.

Section 3.15 Permits shall be renewed following the expiration of the term identified in Section 3.14 upon the terms and conditions identified in O.C.G.A. § 36-66C-7(k)(2)(B).

Section 3.16 If an application for a permit seeks to collocate small wireless facilities on authority poles in the public rights of way, then the City shall, within 60-days of receipt of the completed application: (i) provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the proposed facility; or (ii) notify the wireless provider that the wireless provider will be required to perform the make-ready work. Any make-ready work

performed by the City shall be completed pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(n).

ARTICLE IV REMOVAL; RELOCATION; RECONDITIONING; REPLACEMENT; ABANDONMENT

Section 4.1 A person may remove its small wireless facilities from the public rights of according to the procedures of O.C.G.A. § 36-66C-5(e).

Section 4.2 In the event of a removal under Section 4.1, the right of way shall be, to the extent practicable in the reasonable judgment of the City, restored to its condition prior to the removal. If a person fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the removal within 90 days of the removal, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the person the City's reasonable, documented cost of removal and restoration, plus a penalty not to exceed \$500.00. The City may suspend the ability of the wireless provider to receive any new permits from the City under ARTICLE III until the person has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City will not suspend such ability of any wireless provider that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

Section 4.3 If, in the reasonable exercise of police powers, the City determines: (i) a pole or support structure unreasonably interferes with the widening, repair, reconstruction, or relocation of a public road or highway, or (ii) relocation of poles, support structures, or small wireless facilities is required as a result of a public project, the wireless provider shall relocate such poles, support structures, or small wireless facilities pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(l). If the wireless provider fails to relocate a pole, support structure or small wireless facility or fails to provide a written good faith estimate of the time needed to relocate the pole, support structure or small wireless within the time period prescribed in O.C.G.A. § 36-66C-7(l), the City may take the actions authorized by O.C.G.A. § 36-66C-7(o), in addition to any other powers under applicable law.

Section 4.4 The City shall recondition and replace authority poles consistent with the provisions of O.C.G.A. § 36-66C-7(m). Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. § 36-66C-7(m).

Section 4.5 A wireless provider must notify the City of its decision to abandon any small wireless facility, support structure or pole pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. § 36-66C-7(p) regarding abandonment. The City may take all actions and exercise all powers authorized under O.C.G.A. § 36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.

ARTICLE V STANDARDS

Section 5.1 Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right of way as a permitted use: (i) upon a receipt of a permit under ARTICLE III; (ii) subject to applicable codes; and (iii) so long as such small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the appropriate provisions of O.C.G.A. § 36-66C-7(h).

(a) New, modified, or replacement poles installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level.

(b) Each new, modified, or replacement pole installed in the right of way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:

(i) Fifty feet above ground level; or

(ii) Ten feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole;

(c) New small wireless facilities in the public right of way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.

(d) New small wireless facilities in the public right of way collocated on a new or replacement pole under Section 5.1(a) or Section 5.1(b) may not extend above the top of such poles.

Section 5.2 A decorative pole should only be located where an existing pole can be removed and replaced, or at a new location where the City has identified that a streetlight is necessary.

Section 5.3 Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:

(a) Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure, or placed within shrouds of a size such that the antenna appears to be part of the pole or support structure;

(b) Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure, or be designed and placed to minimize visual impacts.

(c) Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, located to avoid interfering with, or creating any

hazard to, any other use of the public rights of way, and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.

(d) Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.

Section 5.4 Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility within a historic district, and may place or replace a pole within a historic district, only upon satisfaction of the following: (i) issuance of a permit under ARTICLE III and (ii) compliance with applicable codes.

Section 5.5 Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following: (i) issuance of a permit under ARTICLE III and (ii) compliance with applicable codes.

ARTICLE VI COLLOCATIONS AND POLE INSTALLATIONS SUBJECT TO ADMINISTRATIVE REVIEW

Section 6.

(a) A wireless provider may collocate small wireless facilities on City poles and decorative poles in the right of way, subject to administrative review only and the issuance of a permit as set forth in this Article VI. Subject to administrative review only and the issuance of a permit as set forth in this Article VI, a wireless provider may occupy the right of way for the following uses, provided that such uses shall be in accordance with applicable provisions of this Ordinance, including without limitation, those set forth in Article VIII of this Ordinance.

- (1) Collocation of a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in subsection (9)(c) of Section 3.4 or on or adjacent to the decorative pole in compliance with Article 11; and
- (2) Installation, modification, or replacement of a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in subsections (9)(a) and (9)(b) of Article III, Section 3.4.

(b) No wireless provider shall collocate any small wireless facility in the right of way or install, modify, or replace a pole or decorative pole for collocation of a small

wireless facility in the right of way without first filing an application and obtaining a permit therefor, except as otherwise expressly provided in subsection (e) of this Section 6. Any failure to comply with this subsection (b) by a wireless provider shall allow the City, at its sole discretion, to restore the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider its reasonable, documented cost of doing so, plus a penalty not to exceed \$1,000.00. The City may suspend the ability of the wireless provider to receive any new permits from the City until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(c) The City shall make accepted applications publicly available; provided, however, that an applicant may designate portions of its application materials that it reasonably believes contain trade secrets by following the procedures set forth in paragraph (34) of subsection (a) of O.C.G.A. §50-18-72.

(d) The application shall be made by the applicable wireless provider or its duly authorized representative and shall contain the following:

- (1) The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant;
- (2) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
- (3) A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
- (4) Detailed construction drawings regarding the proposed use of the right of way;
- (5) To the extent the proposed facility involves collocation on a pole, decorative pole, or support structural report performed by a duly licensed engineer evidencing that the pole, decorative pole, or support structure will structurally support the collocation, or that the pole, decorative pole, or support structure may and will be modified to meet structural requirements, in accordance with applicable codes;
- (6) For any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;

- (7) Information indicating the horizontal and approximate vertical location, relative to the boundaries of the right of way, of the small wireless facility for which the application is being submitted;
- (8) If the application is for the installation of a pole or replacement of a decorative pole, a certification that complies with subsection (k) of this Section 6;
- (9) If the small wireless facility will be collocated on a pole or support structure owned by a third party, other than a City pole or a decorative pole, a certification that the wireless provider has permission from the owner to collocate on the pole or support structure; and
- (10) If the applicant is not a wireless services provider, a certification that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the pole or decorative pole at the requested location.

(e) An application shall not be required for the following activities, provided that a wireless provider may be required to obtain permits for such activities, such as electrical permits or street opening permits, if otherwise required by generally applicable law:

- (1) With respect to a pole or decorative pole on which a small wireless facility is collocated, inspections, testing, repairs, and modifications that maintain functional capacity and aesthetic and structural integrity, provided that modifications are limited by the structural load analysis supplied by the applicant in its prior application to the City; and
- (2) With respect to a small wireless facility, inspections, testing, or repairs that maintain functional capacity or the replacement or upgrade of antennas or other components of the small wireless facility such as a swap out or addition of antennas and radio equipment as required by the applicant, with antennas and other components that are substantially similar in color, aggregate size, and other aesthetics to that previously permitted by the City and consistent with the height and volume limits for small wireless facilities under this Ordinance, so long as the pole, decorative pole, or support structure will structurally support, or prior to installation will be modified to support, the structural load in accordance with the structural load analysis supplied by the applicant in its prior application to the City.

(f) A wireless provider is not required to obtain a permit or any other approval or pay fees or rates for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between poles or support structures in the right of way in compliance with applicable codes; provided, however, that a City may require a wireless provider to obtain permits for any additional activities such as electrical work, excavation, or closure of sidewalks or vehicular lanes

within the right of way if otherwise required by generally applicable law. The City shall issue such permits on a nondiscriminatory basis upon terms and conditions applied to any other person's similar activities in the right of way.

(g) Any material change to information contained in an application shall be submitted in writing to the City within 30 days after the events necessitating the change.

(h) Unless otherwise provided by applicable law, all applications pursuant to this Ordinance shall be accompanied by the fees required under Article III, Section 3.4 of this Ordinance.

(i) The City shall not enter into an exclusive arrangement with any person for use of the right of way for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles or for the right to attach to City poles. A person that purchases or otherwise acquires a City pole is subject to the requirements of this subsection (i).

(j) The City, in the exercise of its administration and regulation of the management of the right of way, shall be competitively neutral and nondiscriminatory with regard to other users of the right of way.

(k) A wireless provider shall not apply to install a pole or replace a decorative pole unless it has determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which:

- (1) The wireless provider has the right to collocate subject to reasonable terms and conditions; and
- (2) Such collocation would not impose technical limitation or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(l) Requests for installation, modification, or replacement of a support structure are not eligible for administrative review as set forth in this Section 6.

(m) An application that is subject to administrative review shall be approved except as provided in subsection 11 of Section 3.4.

(n) The provisions of this Ordinance concerning the collocation of small wireless facilities on poles and the installation, modification, and replacement of poles by wireless providers apply only to poles that are lawfully located or are to be lawfully located within the right of way. The City has the burden of establishing that an existing pole's location within the right of way is not lawful.

**ARTICLE VII
ACTIVITY IN THE RIGHT OF WAY THAT IS NOT SUBJECT TO
ADMINISTRATIVE REVIEW**

Section 7. Applications for any other uses that are not expressly set for or referenced in subsection (a) of Section 6 or that are not otherwise addressed by this Ordinance shall require compliance with, and issuance of a permit under, applicable law. Without limiting the foregoing, any modification, maintenance, repair, or replacement that is not set forth in subsections (e) and (f) of Section 6 that is not eligible for administrative review under Article III, Section 3.3 shall require compliance with, and issuance of a permit under, applicable law.

**ARTICLE VIII
DUTY OF DUE CARE REGARDING ACTIVITY IN THE RIGHT OF WAY**

Section 8.

(a) An applicant in the right of way shall employ due care during the installation and maintenance process and shall comply with all safety and right of way protection requirements of general applicability set forth in applicable law.

(b) An applicant in the right of way shall not place any small wireless facilities, support structures, poles, or decorative poles where they will interfere with any existing infrastructure or equipment and shall locate its lines and equipment in such a manner as not to interfere unnecessarily with the usual vehicular or pedestrian traffic patterns or with the rights or reasonable convenience of owners of property that abuts any right of way.

**ARTICLE IX
HISTORIC DISTRICTS**

Section 9. Notwithstanding any provision of this Ordinance to the contrary, within a historic district, an applicant may collocate a small wireless facility and may place or replace a pole, only upon satisfaction of the following:

- (1) The issuance of a permit under subsection (a) of Section 6; and
- (2) (A) Compliance with any objective, reasonable, and nondiscriminatory aesthetic and structural requirements that have been made publicly available in writing by the City at least 30 days prior to submission of the application; provided, however, that any such requirements may not have the effect of materially inhibiting any wireless provider's technology or service, and compliance with any such requirements shall not be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility; or

(B) In the absence of any such requirements, a replacement pole shall be substantially similar in height and appearance to the pole being replaced.

**ARTICLE X
NEW POLES IN AREAS ZONED FOR RESIDENTIAL USE**

Section 10. For applications for new poles in the right of way in areas zoned for residential use, the City may propose an alternate location in the right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the City's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

**ARTICLE XI
DECORATIVE POLES**

Section 11. Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following:

- (1) The issuance of a permit under subsection (a) of Section 6; and
- (2) (A) Compliance with an objective and reasonable aesthetic and structural requirements that have been made publicly available in writing by the City at least 30 days prior to submission of the application; provided, however, that any such requirements shall not have the effect of materially inhibiting any wireless provider's technology or service, and compliance with any such requirements shall not be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility; or

(B) In the absence of any such requirements, a replacement decorative pole shall be substantially similar in height and appearance to the decorative pole being replaced.

The City shall operate City fixtures on the replaced decorative pole, and, absent an agreement to the contrary between the City and the wireless provider that is confirmed by email or other writing, the City shall take ownership of the new decorative pole.

**ARTICLE XII
CONSOLIDATED APPLICATIONS**

Section 12.

- a) An applicant may submit a single consolidated application, provided that such a consolidated application shall be for geographic area no more than two miles in diameter and shall comply with this Section 12. The denial of one or more small wireless facilities or poles in a consolidated application shall not delay the processing of any other small

wireless facilities or poles in the same application. The City may issue a single permit or multiple permits for the small wireless facilities and poles in a consolidated application.

- b) 1) A consolidated application for the replacement of new poles and the collocation of one or more small wireless facilities on such new poles may include no more than five poles and any associated small wireless facilities. While an applicant has applications, including consolidated applications, pending before the City for review of 15 or more new poles and the collocation of associated small wireless facilities, the City may, but shall not be required to, toll the processing requirements under Article III, Section 3.4 for any application subsequently submitted by the same applicant for the placement of new poles and the collocation of associated small wireless facilities.

2) A consolidated application for the collocation of small wireless facilities on existing poles or support structures may include no more than 15 sites. While an applicant has applications, including consolidated applications, pending before the City for review of 45 or more sites for the collocation of small wireless facilities on existing poles or support structures, the City may toll the processing requirements under Article III, Section 3.4 for any application subsequently submitted by the same applicant for the collocation of small wireless facilities on existing poles or support structures.

- c) 1) Small wireless facilities and poles that a wireless services provider applicant has requested a third party to deploy and that are included in a pending application by the third party shall be counted as pending requests by the wireless services provider applicant; and

2) When the processing of an application is tolled pursuant to subsection (b) of this Section 12, the application is no longer counted as pending. As processing of application in the order in which they were submitted, unless the applicant specifies a different order.

ARTICLE XIII MULTIPLE APPLICATIONS FOR SAME LOCATION

Section 13. If multiple applications are received by the City to install two or more poles or decorative poles at the same location or to collocate two or more small wireless facilities on the same pole, decorative pole, or support structure, the City shall resolve conflicting requests in an appropriate, reasonable, and nondiscriminatory manner.

ARTICLE XIV INDEMNITY AND INSURANCE

Section 14.

- a) A wireless provider shall indemnify and hold the City and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees arising from the wireless provider's activities in the public right of way under this Ordinance if a court of competent jurisdiction has found that the negligence of the wireless

provider while conducting such activities caused the harm that resulted in such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

- b) The City shall not require a wireless provider to obtain insurance naming the City or its officers and employees an additional insured against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees arising from the wireless provider's activities in the public right of way under this Ordinance.
- c) In no event shall the City or any officer, employee, or agent affiliated therewith, while in the performance of its or his or her official duties, be liable for any claim related to the siting, installation, maintenance, repair, replacement, relocation, permitting, or location of wireless equipment, facilities, poles, or infrastructure, including, but not limited to, any claim for destruction, damage, business interruption, or signal interference with other communications service providers wherein such siting, installation, maintenance, repair, replacement, relocation, permitting, or location was undertaken in substantial compliance with Chapter 66C of Title 36 of the O.C.G.A.

**ARTICLE XV
INSTALLATION OF FACILITIES IN THE RIGHT OF WAY THAT ARE NOT
SUBJECT TO THIS ORDINANCE**

Section 15

- a) The construction, installation, maintenance, modification, operation, and replacement of wireline backhaul facilities in the right of way are not addressed by this Ordinance, and any such activity shall comply with O.C.G.A. §46-5-1, Chapter 76 of Title 36 of the Georgia Code, and other applicable law.
- b) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Ordinance shall not authorize the provision of any communications services.
- c) This Ordinance shall not apply to the City to the extent that it uses communications facilities to provide free Wi-Fi services to the public.

**ARTICLE XVI
COMPLIANCE WITH UNDERGROUND FACILITY PROTECTION STATUTES**

Section 16. Nothing in the Ordinance relieves any person of any duties set forth in Chapter 9 of Title 25 of the Georgia Code.

**ARTICLE XVII
NOTICE OR DECISION**

Section 17. The City will send any notice or decision required by O.C.G.A. Title 36, Chapter 66C by registered or certified mail, statutory overnight delivery, hand delivery, or email transmission. The decision or notice shall be deemed delivered upon email transmission, deposit into overnight mail or regular mail receptacle with adequate postage paid, or actual receipt if delivered by hand.

**ARTICLE XVIII
AGREEMENTS THAT VARY FROM THIS ORDINANCE**

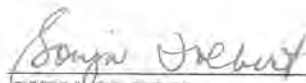
Section 18. Nothing in this Ordinance shall prohibit the City and a wireless provider from voluntarily entering one or more such agreements, including such agreements with rates, fees, and other terms that differ from those in this Ordinance; provided, however, that the City shall make each such agreement available for public inspection and available for adoption upon the same terms and conditions to any requesting wireless provider.

Section 19. Absent an agreement to the contrary that is made public and that is available for adoption upon the same terms and conditions to any requesting wireless provider, an authority shall not require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or space on a utility pole or a wireless support structure for the authority, and such authority may not require an application to transfer small wireless facilities, poles, decorative poles, or support structures to the authority, provided that the authority may require transfer of an authority pole replaced by the applicant to accommodate its collocation.

Section 20. All Ordinances, or parts of Ordinances, in conflict herewith are repealed.


MAYOR

ATTEST:


CITY CLERK

Adopted: *September 24, 2019*



Introduced By Commissioner: *Bob Langstaff, Jr*
Date(s) read: *September 24, 2019*