

**ORDINANCE ENACTING TITLE 6 CHAPTER 1 ARTICLE F –  
SMALL CELL FACILITIES IN THE PUBLIC RIGHT-OF-WAY  
OF THE CODE OF ORDINANCES CITY OF HARRISONBURG,  
VIRGINIA**

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Harrisonburg that Title 6, Chapter 1 of the Code of the City of Harrisonburg shall be amended by adding the following Article F, “Small Cell Facilities in the Public Right-of-Way” that will read as follows:

**Sec. 6-1-84. – Purpose and Scope.**

- (a) Purpose. The purpose of this Article is to establish uniform policies and procedures for the deployment and installation of Small Cell Facilities in rights-of-way within the City’s jurisdiction and owned by the City, consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.
- (b) Intent. In enacting this Article, the City is establishing uniform standards to address issues presented by Small Cell Facilities, 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 existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
  - (4) ensure reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed;
  - (5) protect against environmental damage, including damage to trees; and facilitate deployment of Small Cell Facilities to homes, businesses, and schools within the City.
- (c) Conflicts with Other Chapters. To the extent that any provision of this Article may be in conflict with other provisions of the City Code, the provisions of this Article shall take precedence over any such conflicting provisions.

## **Section 6-1-85 - Definitions**

For purposes of this Article, the words used herein are defined as follows:

*Antenna:* communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

*Applicant:* any Wireless Services Provider or Wireless Infrastructure Provider that submits an Application.

*Application:* a request submitted by an Applicant (i) for a permit to collocate Small Cell Facilities on Existing Structures in a ROW or (ii) to approve the installation or construction of a Utility Pole or Wireless Support Structure in a ROW.

*Base Station:* a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

*Building Permit:* a permit issued by the building and zoning office pursuant to Section 10-3-10 of the City's Code.

*Collocate:* to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

*City:* the City of Harrisonburg, Virginia.

*City Structure(s):* an Existing Structure that is owned or control by the City.

*Day(s):* a calendar day unless otherwise specified.

*Design Criteria:* any aesthetic or other design criteria for Wireless Support Structures upon which Small Cell Facilities are attached published by the City's Department of Public Works.

*Existing Structure:* any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to the City of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

*Fee:* a one-time charge unless otherwise specified.

*New Structure*: a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider submits an Application.

*Permit(s)*: collectively a Building Permit and a Public Access Permit.

*Person*: an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

*Rights-of-Way (ROW)*: the area on, below, or above a roadway, highway, street, sidewalk, alley, or similar property, but not including a federal interstate highway, in the City and owned by the City.

*Public Access Permit*: a permit issued by the Department of Public Works that must be obtained before any work is performed in the City's ROW.

*Small Cell Facility(ies)*: a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

*Utility Pole*: a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

*Water tower*: a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

*Wireless Facility*: equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and

comparable equipment, regardless of technological configuration.

*Wireless Services:* (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

*Wireless Services Provider:* a provider of wireless services.

*Wireless Support Structure:* a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

*Wireless Infrastructure Provider:* any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

#### **Section 6-1-86 – Co-Location on Third-Party Owned Existing Structures**

- (a) A Wireless Services Provider or Wireless Infrastructure Provider may install Small Cell Facilities on an Existing Structure without obtaining any zoning approval, which includes, without limitation, any request for a special exception, special use permit, or variance provided that the Wireless Services Provider or Wireless Infrastructure Provider (i) has permission from the owner of the structure to Co-locate equipment on that structure and (ii) notifies the City. In instances where an existing Utility Pole is to be removed and replaced with a new Utility Pole, the Small Cell Facility will be considered as attaching to an existing Utility Pole.
- (b) The City shall approve or disapprove the Application within sixty (60) days of receipt of the complete Application. Within ten (10) days after receipt of an Application and a valid electronic mail address for the Applicant, the City shall notify the Applicant by electronic mail whether the Application is incomplete and specify any missing information; otherwise, the Application shall be deemed complete. Any disapproval of the Application shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the

City in writing for a period not to exceed an additional thirty (30) days. The Application shall be deemed approved if the City fails to act within the initial sixty (60) days or an extended 30-day period.

- (c) The City may disapprove a proposed location or installation of a Small Cell Facility only for the following reasons:
  - (1) Permission has not been granted by the owner of the structure to Co-locate equipment on that structure; or
  - (2) Notice of the agreement for the co-location has not been provided to the City.
- (d) The City shall conduct an administrative review for the issuance of any Permits for the Co-location of a Small Cell Facility by a Wireless Services Provider or Wireless Infrastructure Provider on an Existing Structure.

**Section 6-1-87 – New or Replacement Wireless Support Structures for Small Cell Facilities**

- (a) A Wireless Services Provider or Wireless Infrastructure Provider may install, replace, or construct new or replacement Wireless Support Structures in the Right of Way for purposes of Co-locating Small Cell Facilities thereon without obtaining any zoning approval, which includes, without limitation, any request for a special exception, special use permit, or variance provided the new or replacement Wireless Support Structure is not (i) more than fifty (50) feet above ground level or (ii) with attached Wireless Facilities more than ten (10) feet above the tallest existing Utility Pole located within five hundred (500) feet of the new structure within the same public right-of-way or within the existing line of Utility Poles. In instances where an existing Wireless Support Structure is to be removed and replaced with a new Wireless Support Structure, the Small Cell Facility will be considered as attaching to an existing Wireless Support Structure.
- (b) Prior to installing any new Wireless Support Structures in the ROW, a Wireless Services Provider or Wireless Infrastructure Provider shall file an Application with the City for a Wireless Support Structures and obtain a Permit. Within ten (10) business days after receiving an Application, the City shall notify Applicant if the Application is incomplete. The notice shall specify any additional information

required to complete the Application. The notice shall be sent by electronic mail to Applicant's email address provided in the Application. If the City fails to provide such notice within such 10-day period, the Application shall be deemed complete. Within ninety (90) calendar days of receipt, the City shall, in writing, approve or reject the Application, otherwise the Application shall be deemed approved. If the City timely rejects the Application, the review period will be suspended until Applicant cures the non-compliance.

- (c) The City may reject an Application only for one or more of the following reasons, which must be specified with reasonable detail in the rejection:
  - (1) concerns about structural capacity, safety, reliability, or generally applicable engineering practices;
  - (2) the Application is incomplete;
  - (3) the proposed Wireless Facility exceeds the height, dimension or other parameters for Small Cell Facilities as defined in this Article F;
  - (4) the design documents attached to the Application do not comply with this Article F or with the City's pole attachment laws, show interference with the City's public safety radio system, traffic signal light system, or other communications components, or do not comply with the Design Criteria; or
  - (5) the Application does not include a load bearing study.
- (d) Other Requirements. A Wireless Services Provider or Wireless Infrastructure Provider that seeks to install new Wireless Support Structures for a Small Cell Facilities shall be subject to the following requirements:
  - (1) New Wireless Support Structures shall be located such that they do not interfere with public health or safety, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.
  - (2) New Wireless Support Structures shall be located in such a manner so as to prevent interference with existing poles or facilities in the right-of-way.
  - (3) New Wireless Support Structures shall not be installed directly over any traffic signal communication, water, sewer, gas, electric or reuse main or service line.

- (4) New Wireless Support Structures installed to support Small Cell Facilities shall be made of the same or similar material as existing poles or, if none, Utility Poles in the immediate area.
- (5) A Wireless Services Provider or Wireless Infrastructure Provider shall repair, at its sole cost and expense, any damages including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind, utility lines or systems, or sewer or water systems and water and sewer lines that are caused by any activities performed in connection with the installation or maintenance of a Wireless Support Structure in the ROW.

**Section 6-1-88 – Co-location on City Structures.**

- (a) A Wireless Services Provider or Wireless Infrastructure Provider may Co-locate Small Cell Facilities to City Structures without obtaining any zoning approval, which includes, without limitation, a special exception, special use permit, or variance provided that the Wireless Services Provider or Wireless Infrastructure Provider (i) has permission from the City to Co-locate equipment on that structure and (ii) obtains Permits. The City and the Wireless Services Provider or Wireless Infrastructure Provider shall negotiate in good faith to arrive at mutually agreeable contract terms and conditions.
- (b) Prior to installing any Small Cell Facilities on a City Structure, a Wireless Services Provider or Wireless Infrastructure Provider shall file an Application with the City to Co-locate on a City Structure and must obtain a Permit. Within ten (10) business days after receiving an Application, City shall notify Applicant if the Application is incomplete. The notice shall specify any additional information required to complete the Application. The notice shall be sent by electronic mail to Applicant's email address provided in the Application. If the City fails to provide such notice within such 10-day period, the Application shall be deemed complete. Within sixty (60) days of receipt, the City shall, in writing, approve or reject the Application, otherwise the Application shall be deemed approved. If the City timely rejects the

Application, the review period will be suspended until Applicant cures the non-compliance.

- (c) The City may reject an Application only for one or more of the following reasons, which must be specified with reasonable detail in the rejection:
  - (1) concerns about structural capacity, safety, reliability, or generally applicable engineering practices;
  - (2) the Application is incomplete;
  - (3) the proposed Wireless Facility exceeds the height, dimension or other parameters for Small Cell Facilities as defined in this Article F;
  - (4) the design documents attached to the Application do not comply with this Article F or with the City's pole attachment laws, show interference with the City's public safety radio system, traffic signal light system, or other communications components, or do not comply with the Design Criteria; or
  - (5) the Application does not include a load bearing study.
- (d) Utility Poles. If a Wireless Services Provider or Wireless Infrastructure Provider deems a City owned or controlled Utility Pole structurally inadequate for Co-location, then the City shall provide a good faith estimate for any make-ready work necessary to enable the Utility Pole to support the requested Co-location, including Utility Pole replacement, if necessary, within sixty (60) days after receipt of a complete Application. In instances where an existing city owned or control Utility Pole is to be removed and replaced with a new Utility Pole, the Small Cell Facility will be considered as attaching to an existing Utility Pole. Make-ready work, including any Utility Pole replacement, shall comply with the following:
  - (1) All make-ready work shall be complete within sixty (60) days of written acceptance of the good faith estimate by a Wireless Services Provider or Wireless Infrastructure Provider.
  - (2) The City shall not require more make-ready work than required to meet applicable codes or industry standards.



- (3) Charges for make-ready work, including any Utility Pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television and electric services for similar work and shall not include consultants' fees or expenses.

### **Section 6-1-89 – Application Requirements**

An Application made by a Wireless Services Provider or Wireless Infrastructure Provider, or its respective duly authorized representative, shall contain the following:

- (a) The Wireless Services Provider's or Wireless Infrastructure Provider's name, address, telephone number, and e-mail address.
- (b) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
- (c) A general description of the proposed work and the purpose of the work proposed.
- (d) If erecting a new Wireless Support Structure:
  - (1) a physical survey of the area and the precise location where the Wireless Support Structure will be installed;
  - (2) a location map and elevation drawing of the proposed Wireless Support Structure prepared and certified by a professional engineer indicating: the location, type, and height of all structures associated with the facility; the planned capacity; means of access; position in relation to the public street or alley right-of-way lines; and all applicable American National Standards Institute technical and structural codes; and
  - (3) photo simulations of the proposed Wireless Support Structure.
- (e) For Small Cell Facilities proposed to be located on an existing structure, evidence that the applicant has permission from the owner of the structure to co-locate the equipment on such structure.

### **Section 6-1-90 – Design Requirements**

The Department of Public Works is authorized to impose specific requirements related to the design and placement of Small Cell Facilities that are reasonable, non-discriminatory,

objective, and published in advance provided:

- (a) Any Design Criteria shall only apply if the criteria are (i) reasonable, (ii) applied equally and in a non-discriminatory manner to other types of infrastructure deployments within the ROW, (iii) objective and published in advance of an Application submittal, and (iv) comply with applicable federal and state laws. Changes made to the Design Criteria shall not be imposed or otherwise applied retroactively unless required by law.
- (b) A proposed Wireless Facility meeting the height, dimension or other parameters for a Small Cell Facility as defined in this Article F shall be deemed approved, as long as the equipment generally complies with the Design Criteria.

#### **Section 6-1-91 – Permit Requirements**

A Wireless Services Provider and Wireless Infrastructure Provider shall be required to apply for and obtain only those permits that are required of other occupants of the ROW. The City may only impose on the Permit those conditions that are permitted by applicable law and necessary to protect structures in the ROW, to ensure the proper restoration of the ROW, to provide for protection and the continuity of pedestrian and vehicular traffic, and otherwise to protect the safety of the public's utilization of the ROW.

#### **Section 6-1-92 – Effect of Permit**

- (a) Authority Granted. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Article, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.
- (b) Duration. Construction pursuant to a Permit must commence within twelve (12) months from issuance and be diligently pursued thereafter, or such Permit shall expire.

#### **Section 6-1-93 – Routine Maintenance and Replacement**

An Application or other zoning approval shall not be required for a Wireless Services Provider or Wireless Infrastructure Provider to (i) conduct routine maintenance on or (ii) replace a

Small Cell Facility with another Small Cell Facility that is substantially similar or the same size or smaller. Notwithstanding the foregoing, the City may separately Public Access Permit to work within the right-of-way for the activities described in clause (i) or (ii), if applicable.

#### **Section 6-1-94 – Removal and Relocation of Small Cell Facilities**

No later than one hundred eighty (180) days after receipt of written notice from the City, a Wireless Services Provider or Wireless Infrastructure Provider shall remove and may relocate a Small Cell Facility to an alternative location made available by the City due to: (i) construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or (ii) maintenance, upgrade, expansion, replacement, or relocation of the City traffic light poles and/or traffic signal light system; or (iii) permanent closure of a street. The City shall require removal or relocation only if necessary. If a Wireless Services Provider or Wireless Infrastructure Provider fails to remove or relocate any Small Cell Facility within the 180-day period, the City shall be entitled to remove the Small Cell Facility at the Wireless Services Provider or Wireless Infrastructure Provider's expense. The City and the Wireless Services Provider or Wireless Infrastructure Provider shall cooperate to the extent possible to assure continuity of service during any relocation. The City shall use best efforts to provide a reasonably equivalent location that affords the Wireless Services Provider or Wireless Infrastructure Provider substantially similar engineering objectives.

#### **Section 6-1-95 – Fee Schedule**

- (a) A Wireless Services Provider or Wireless Infrastructure Provider shall pay to the City the following fees and costs as applicable:

New Wireless Support Structure One-Time

Application Fee	\$500.00
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Co-location Application Fee	\$100.00 for up to five (5) small cell facilities, with an additional \$50.00 for each small cell facility beyond five (5)
City Structure Annual Recurring Fee	\$20.00
New Wireless Support Structure Annual Recurring Fee	\$ 0.00

- (b) For purposes of determining the applicable total annual fee for a partial calendar year in which the commencement date occurs in a month other than January, the total fee will be a pro-rated amount equal to the product obtained by multiplying 1/12th of the annual fee by the number of months remaining in such year.
- (c) Except as provided in the above Fee Schedule, City shall not require any other or additional recurring fees, costs, or charges of any kind.

#### **Section 6-1-96 – Miscellaneous**

Notwithstanding anything to the contrary in this Article, in the event that this Article, in whole or in part, is declared or determined by a judicial, administrative, or legislative authority (whether State or Federal) exercising its jurisdiction to be excessive, unreasonable, unenforceable, void, unlawful, or otherwise inapplicable, the judicial, administrative, or legislative order shall control the deployment of small wireless facilities in the City until this Article is amended.

This ordinance shall be effective from the \_\_\_\_\_ day of, 2019. Adopted and approved this day of \_\_\_\_\_, 2019.

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**MAYOR**

ATTESTE:

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CITY CLERK