



## REQUEST FOR COUNCIL ACTION

### City of Greenville, South Carolina

Agenda Item No.

14a

**TO:** Honorable Mayor and Members of City Council  
**FROM:** John F. McDonough, City Manager

Ordinance/First Reading
  Ordinance/Second & Final Reading
  Resolution/First & Final Reading
  Information Only

**AGENDA DATE REQUESTED:** March 8, 2021

**ORDINANCE/RESOLUTION CAPTION:**

ORDINANCE AMENDING CHAPTER 19, LAND MANAGEMENT, AND CHAPTER 36, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE TO PROVIDE FOR THE REGULATION OF SMALL WIRELESS FACILITIES

**SUMMARY BACKGROUND:**

Following the enactment of state legislation governing Small Wireless Facilities (SWF), this ordinance amends Chapters 19 and 36 of the City Code to address the City's regulation of SWFs in its rights-of-way

This Ordinance received first reading on September 28, 2020. During the interim period between first and second reading, the City refined its regulatory approach by adopting a stand-alone ordinance rather than making piecemeal changes to the City's existing right-of-way management Ordinances. In addition, the Ordinance designates design districts, as contemplated under the State legislation, where unique design and aesthetic standards shall apply.

**IMPACT IF DENIED:**

Chapters 19 and 36 will not be amended.

**FINANCIAL IMPACT:**

N/A

#### REQUIRED SIGNATURES

Department Director \_\_\_\_\_

OMB Director \_\_\_\_\_

City Attorney Michael Pitts

City Manager John McDonough

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## A N O R D I N A N C E

## AMENDING CHAPTER 19, LAND MANAGEMENT, AND CHAPTER 36, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, OF THE CODE OF ORDINANCES OF THE CITY OF GREENVILLE TO PROVIDE FOR THE REGULATION OF SMALL WIRELESS FACILITIES

GENERAL STATEMENT OF INTENT: The purpose of this Ordinance is to provide for the public health, safety, and welfare by ensuring that residents, businesses, and public safety operations in the city of Greenville (the “City”) have reliable access to telecommunications networks and state of the art mobile broadband communications services while also ensuring that this objective is accomplished according to City’s right-of-way and design standards. To accomplish these objectives and to ensure that the placement, construction, or modification of Wireless Telecommunications Facilities complies with all applicable Federal and State laws, the City adopts the amendment to Chapters 19 and 36 of the Code of Ordinances of the City of Greenville (the “City Code”) as set forth more fully below. By enacting this Ordinance, it is the City’s intent to ensure the City has sufficient wireless infrastructure to ensure access to reliable wireless communications services throughout all areas of the City, minimizing impacts on surrounding areas, encouraging coordination among suppliers of telecommunications, establishing procedures to ensure that telecommunications applications are reviewed and acted upon within the time frames established by applicable law, encouraging the use of existing buildings and structures as locations for telecommunications facilities, ensuring structural integrity, maintaining the aesthetic character of the City, and protecting persons and property.

WHEREAS, the City previously amended Chapter 19 of the City Code to regulate the design and placement of Wireless Communication Facilities within the City, including its rights-of-way; and

WHEREAS, there has subsequently been changes in the law at the federal level and the General Assembly has enacted a Bill of statewide application governing the deployment of small wireless facilities within the rights-of-way (the “State Bill”); and

WHEREAS, to comply with federal law and the State Bill, City Council desires to amend Chapters 19 and 36 of the City Code in order to enact compliant provisions governing the deployment of Small Wireless Facilities within the City’s rights-of-way as fully as more fully reflected in ~~Exhibits A and B~~ Attachments 1 and 2 attached hereto and incorporated herein; and

WHEREAS, the aforementioned amendments to Chapter 19 were presented to the Planning Commission at its meeting on August 20, 2020, where a public hearing was conducted and the Commission unanimously recommended approval of said text amendments; and

WHEREAS, the Ordinance received first reading on September 28, 2020; and

WHEREAS, during the interim period between first and second reading, the City has refined its regulatory approach by adopting a stand-alone small wireless facilities right-of-way Ordinance rather than making piecemeal changes to the City’s existing right-of-way management Ordinances; and

WHEREAS, in furtherance of these amendments to the City Code, the City Council desires to designate design districts and underground districts as contemplated under the State Bill, in order to provide for unique design and aesthetic standards on a uniform and nondiscriminatory basis due to

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the fact that the characteristics of said districts warrant design and aesthetic standards that differ from those that apply elsewhere in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA:

1. Chapters 19 ~~and 36~~ of the City Code ~~is~~ ~~are~~ amended as set forth in Exhibits A, and B, respectively, which are attached hereto and incorporated herein.
2. Chapter 36 of the City Code is amended by: (a) creating Article IV, Division 1, which shall consist of current City Code Sections 36-91 through 36-130, inclusive, and (b) by creating Article IV, Division 2, which shall consist of the sections that are set forth in Exhibit B, attached hereto and incorporated herein. The code codifier shall assign appropriate code sections to same.
- ~~3.~~ The following design districts are hereby established for purposes of the State Bill:
  - a. that geographic area comprised of property zoned C-4: Central Business District; ~~and~~
  - b. that geographic area comprised of property within any Preservation Overlay (PO) District to the extent they are not already considered historic districts for purposes of the State Bill;
  - c. that geographic area comprised of property zoned Unity Park Neighborhood District Character Code (UPNDCC); and
  - d. that geographic area comprised of property within any Neighborhood Revitalization Overlay (NRO) District.
4. The following underground districts are established for purposes of the State Bill:
  - a. that geographic area comprised of property zoned C-4: Central Business District;
  - b. that geographic area comprised of property zoned Unity Park Neighborhood District Character Code (UPNDCC);
  - c. the Verdae development;
  - d. Haywood Road from its intersection with I-385 down to 533 Haywood Road;
  - e. the Clemson University International Center for Automotive Research to include the Millennium Boulevard corridor and its surrounds;
  - f. the Arcadia Hills neighborhood;
  - g. West Washington Street from its intersection with Academy Street up to Mulberry Street;
  - and
  - h. Viola Neighborhood
- ~~5.~~ Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation of the State of South Carolina, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.
- ~~6.~~ This Ordinance shall become effective upon second and final reading.

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DONE, RATIFIED AND PASSED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

REVIEWED:

\_\_\_\_\_  
CITY MANAGER

## EXHIBIT A

Section 1. Section 19-1.11 of the Code of Ordinances of the City is hereby amended as follows:

*Antenna* means communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; or similar equipment used for the transmission or reception of surface waves.

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*Micro wireless facility* means a small wireless facility that meets the following qualifications:

(a) is not longer in dimension that twenty-four inches in length, fifteen inches in width, and twelve inches in height; and

(b) any exterior antenna that is no longer than eleven inches.

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*Node site license* means a site-specific approval for the installation of a wireless communications facility, including the structure supporting same, at a particular location with the public rights-of-way regardless of the type of ~~wireless~~-support structure or pole utilized.

*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 at a particular location. The term includes without limitation, a replacement pole and, when used to refer to a location in the rights-of-way, an authority pole. Such term shall not include a support structure or electric transmission structure.

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*Small Wireless Facilities* has the same meaning as under 47 C.F.R. §1.6001, or under any definition of that term under South Carolina law that is binding on the City, but only as to the placements to which the definition is required to apply.

*Stealth facility* means any wireless communications facility designed to look like some feature other than a wireless tower or base station. ~~any wireless communications facility that is integrated as an architectural feature of an existing building to which it will be affixed; or any wireless communications facility that is camouflaged or concealed; so that the presence of the wireless facility is either: (1) virtually invisible to the casual observer, such as an antenna behind louvers on a building, or inside a steeple or similar structure; or (2) camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surrounding in which it is located.~~ Examples of stealth facilities include wireless facilities which are disguised as public art or markers, as flagpoles, as light poles, as indigenous trees, as rocks, or as architectural elements such as dormers, steeples and chimneys. To qualify as "stealth" design, the item in question must match the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function and other

attributes as closely as possible, and placed in a manner and at a location appropriate to the item that it is mimicking. The elements that make a facility a stealth facility are concealment elements.

~~*Support Structure* means a freestanding structure, other than a tower, upon which wireless communications facilities may be affixed.~~

*Support Structure* means a building, billboard, water tank or any other structure to which a wireless communications facility may be attached other than a pole, decorative pole or electric transmission structure to which a wireless facility is or may be attached. A tower is a support structure for purpose of Ch. 19.

*Wireless communications facility* or *wireless communications facilities* means a facility at a fixed location used in the provision of personal wireless services, wireless Internet access services to the general public or public agencies, or wireless utility, governmental or educational services. The term includes the base station, and accessory equipment, ~~and tower~~, if any, associated with the same, but excludes the pole or supporting structure, other than a tower, to which the facility is or will be affixed, and does not include end user equipment.

*Wireless services* means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

Section 2. Section 19-4.1.2 of the Code of Ordinances of the City hereby amended to read:

#### **Table 19-4.1-2: Table of Uses**

Key: "P" = Permitted Use; "S" = Special Exception Use; "C" = Conditional Use; Blank Cell = Prohibited Use

#### KEY:

**"P" = Permitted Use. A "P" in a cell indicates that a use category is allowed by right in the respective district, subject to compliance with the use-specific regulations set forth in the final column of the table. Permitted uses are subject to all other applicable regulations of this chapter, including those set forth in article 19-6, development and design standards.**

**"S" = Special Exception Use. An "S" in a cell indicates that a use category is allowed only if reviewed and approved as a special exception in accordance with the special exception review procedures of subsection 19-2.3.5, special exception permit.**

**"C" = Conditional Use. A "C" in a cell indicates that a use category is allowed conditionally in the respective district, subject to compliance with the use-specific regulations set forth in the final column of the table and administrative approval in accordance with the procedures of section 19-2.2, common procedures.**

**Blank Cell = Prohibited Use. A blank cell indicates that the use type is prohibited in the district.**

<b>PUBLIC AND INSTITUTIONAL USES 1, 4</b>																
		R 6	R 9	R M 1	R M 1.5	R M 2	R M 3	O D	C 1	C 2	C 3	C 4	S 1	II	RDV	
Utilities	Communication tower, freestanding	S	S	S	S	S	S	S		S	S		S	S	S	19-4.3.2(G)
	Communication tower, roof-mounted	P	P	P	P	P	P	P	P	P	P	P	P	P	P	19-4.3.2(G)
	<u>Small Wireless Facility within right-of-way</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>19-4.3.2(G) and 36-124</u>
	<u>Other Wireless communications facilities right-of-way</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>19-4.3.2(G) and 36-124</u>
	Utility, major											S		S	C	
	Utility, minor	<u>C</u>	C	C	C	C	C	C	C	C	C	C	C	C	C	C

Section 3. Chapter 19, Section 19.4.3.2(G) is amended as follows:

Sec. 19-4.3.2 – Public and Institutional Uses.

(G) *Wireless communications facility.*

- (1) *General requirements.* All wireless communications facilities permitted under this Chapter shall comply with the following general requirements in addition to other applicable provisions of this subsection 19-4.3.2(G):

- (a) *Abandonment and removal.* A wireless communications facility, ~~or tower and any pole or support structure used solely for that wireless communication facility~~ that has not been operated for a period in excess of 12 consecutive months, is abandoned and must be removed; provided the city must first provide written notice to the owner(s) in order to allow the owner(s) ten business days to rebut the assertion of abandonment. Any ~~supporting~~ structure other than a tower, and any property affected by placement of the wireless communications facility or modification of ~~the supporting~~ structure must be restored to its condition prior to attachment of the wireless communications facility, except as the city may otherwise direct. The city shall enforce removal by means of existing regulatory authority, with costs of removal or restoration jointly chargeable to the owner of the wireless communications facility or the ~~supporting~~ structure.
- (b) *Multiple uses on a single parcel or lot.* Wireless communications facilities may be located on a parcel containing another principal use on the same site or may be the principal use itself.
- (c) *Required buffer yards.* Wireless communications facilities or poles or support structures associated with the same shall not be located within street buffer yards that are required by subsection 19-6.2.4, Street buffer yards, with the exception of approved stealth wireless communications facilities.
- ~~(d) *Right of way.* No wireless communications facility may be installed in the public right of way of the city unless:~~
- ~~(i) The applicant holds a valid franchise or other written consent from the city or is otherwise authorized by South Carolina law to occupy the right of way;~~
- ~~(ii) Each wireless communications facility location is permitted through an individual node site license or otherwise approved pursuant to this chapter; and~~
- ~~(iii) The other applicable provisions of this section 19-4.3.2(G) are satisfied along with all ordinances and regulations governing public rights of way management~~
- (~~e~~) *Lighting and signage.*
- (i) *Lighting.* Wireless communications facilities and associated pole or support structure shall not be lighted unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA), or unless the facilities are stealth facilities, and lighting is a concealment element.
- (ii) *Signage.* Except for signage that may be approved as a concealment element, signs located at or upon wireless communications facilities, placed on an associated pole or support structure in connection with the wireless communications facility, ~~or installed by or on behalf of the entity that owns or uses the wireless communications facility~~ shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (~~f~~) *Site usage.*
- (i) Any buildings, cabinets or shelters associated with the wireless communications facility, shall be used only to house equipment and other supplies in support of the operation of the wireless communications facility. Any equipment not used in direct support of such operation shall not be stored on the site.



- (ii) Where stealth facilities are not feasible, base station and accessory equipment shall be located, designed, and/or screened to blend with the existing natural, or built surroundings to reduce the visual impacts as much as technically feasible, and to be compatible with neighboring land uses and the character of the community.
- (iii) Except as part of a stealth facility, no ground mounted base station or accessory equipment is permitted in a residential zone with the exception of such cabinets which do not exceed the dimensions of other utility-associated cabinets within the immediate residential vicinity, and which are shielded or placed in a manner consistent with such other cabinets.
- (iv) The wireless communications facility shall not produce noise that would interfere with the peaceable enjoyment of adjoining properties.
- (v) The equipment installed as part of any wireless communications facility shall be minimized, so that the wireless communications facility is as unobtrusive as technically feasible.
- (vi) The elements of the wireless communications facility, and any pole or support structure to which it is affixed must be consistent with the overall design and character of the neighborhood and locations in which it is placed, and with ~~publically~~publicly-available planned improvements to those neighborhoods. The design, including the physical dimensions of the pole or support structure, are to be considered in making this determination. ~~For facilities in the rights-of-way, the wireless communications facility, and any support structure to which it is to be affixed, must be consistent with the corridor in which it is placed, and publically available planned corridor improvements.~~
- (~~g-f~~) *Exceptions.*
  - (i) Notwithstanding any other provision of the City Code, an applicant may obtain approval of an application for placement of a wireless communications facility and for any pole or support structure for which approval is sought as part of the application, if applicant demonstrates that denial of the application would constitute an effective prohibition within the meaning of 47 U.S.C. Section 332(c)(7) or otherwise violates applicable law such that the city is required to issue a permit for placement. Claims must be supported by sworn declarations, and engineering claims by licensed engineers authorized to practice in the State of South Carolina and qualified to attest to facts asserted.
  - (ii) ~~Approval~~ A Permit is not required under this section 19.4.3.2(G) for placement of cells on wheels for a temporary period as defined under FCC regulations; or for ordinary maintenance or replacement of equipment which does not increase the physical dimensions of a wireless communications facility or supporting structure, or defeat any applicable concealment element. Other modifications of a wireless communications facility, or of a support structure to accommodate a modification to a wireless communications facility, do require approval; provided, however, the city engineer, with the approval of the administrator, may exempt from approval immaterial increases in the physical dimensions of a wireless communications facility or supporting structure, provided the applicable concealment elements are not defeated. A permit under this Chapter is not required for placement, installation, maintenance, operation or replacement of small wireless facilities in the rights-of-way for which a node site license is issued pursuant to Chapter 36, or for micro wireless facilities that

are exempted from the permit requirements of Chapter 36. A permit otherwise is required, provided that for placement of a small wireless facility in any public right-of-way, a permit will be issued applying the standards and procedures of Chapter 36, and this Chapter 19-4-3.2(G)(1).

(hg) *Projects*. When an application for a wireless communications facility is part of a network of planned facilities, an applicant may submit, or may be required by the city to submit, plans for the proposed network as a whole, and the city may evaluate the planned facilities considering the impact of the project as a whole, in order to ensure that the impact of the project is minimized.

(ih) *Other obligations*. The application for, and the placement of wireless communications facilities shall be subject to this chapter and regulations issued to implement this chapter. This section 19-4.3.2 shall not be interpreted to waive any obligations that may apply under other provisions of applicable law, including but not limited to building and electrical codes, ~~noise codes, and codes governing use of the rights-of-way.~~

(ji) *Design guidelines—generally*. In order to provide guidance to applicants concerning the design of wireless communications facilities, support structures, and poles, towers, and/or poles which comply with this chapter, the city engineer shall maintain and publish on the city's website a catalogue of site-specific designs that have been approved by the city, it being recognized that the same design as those set forth in in the catalogue should in most instances be deemed appropriate for a comparable location. A person who wishes to install a wireless communications facility may ask the city to review the design for installation in particular locations, and to add the design to the catalogue.

(2) *Towers, monopoles and colocation.*

- (a) *Types permitted*. New towers must be either monopoles, or stealth facilities, and stealth facilities are preferred.
- (b) *Availability of other suitable locations*. New monopoles other than stealth facilities shall not be permitted unless the applicant makes the showing required by section 19-4.3.2(G)(1)(g)(i). Except in residential zoning districts, stealth facilities may be permitted if applicant demonstrates that no existing tower would permit the provision of personal wireless services to the area which the applicant proposes to serve, while satisfying the other provisions of this section 19-4.3.2(G).
- (c) *Design*. Towers shall be subject to the following:
  - (i) Except where inconsistent with other provisions of the City Code, towers shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:
    - (1) Towers 60 to 100 feet shall support at least two communications providers;
    - (2) Towers greater than 100 feet but less than 150 feet shall support at least three communications providers; and
    - (3) Towers greater than 150 feet in height shall support at least four

communications carriers.

- (ii) Except where inconsistent with other provisions of this Code, the equipment compound area surrounding the tower must be of sufficient size to accommodate base station and accessory equipment for the appropriate number of communications providers in accordance with subsection 19-4.3.2(G)(2)(c)(i).
  - (iii) Towers shall be subject to terms and conditions that minimize the impact upon private and public property (including, where applicable, the public right-of-way), ensure consistency with the surrounding area, and employ concealment elements appropriate to the location proposed.
  - (iv) Towers are not permitted within ~~the public utility~~ rights-of-way or in utility easements, except in accordance with the following requirements:
    - (1) The easement area or public rights-of-way shall be a minimum of 100 feet in width;
    - (2) The easement area or public rights-of-way shall contain overhead utility transmission and/or distribution structures that are 80 feet or greater in height;
    - (3) The height of a tower or the highest point on the base station affixed to it may not exceed by more than 30 feet the height of existing utility support structures; and
    - (4) The tower and all other elements of the wireless communications facility associated with it, shall be set back a minimum of 15 feet from all boundaries of the easement or right-of-way.
  - (d) *Setbacks.* Unless otherwise stated herein, towers shall be set back from all property lines a distance equal to its engineered fall zone.
    - (i) *Residential uses.* Where allowed in residential districts, towers shall be located at least 30 feet from the property line of a lot containing a residential use and, further, setback from any structure located thereon at a distance equal to its engineered fall zone.
  - (e) *Height.* When allowed in residential districts, the highest point on the tower or base station affixed to it shall not exceed a height equal to 60 feet from ground level.
  - (f) *Fencing.* Except for towers ~~permitted under section (c)(iv) in the rights-of-way~~, or where the requirement would defeat concealment elements, a tower and all other elements of the wireless communications facility associated with it shall be secured and enclosed with a fence not less than six (6) feet in height. Fencing shall be screened in accordance with subsection 19-6.2.5. Barbwire is prohibited.
- (3) *Roof-mounted communication towers and base stations.*
- (a) *Location.* Except in the C-4 district, a proposed roof-mounted communication tower or base station may be permitted as an accessory or secondary use only on buildings that exceed 50 feet in height in accordance with subsection 19-5.2.9, Building height.
  - (b) *Height.* In the C-4 district, a roof-mounted communication tower or base station shall not exceed a height to which it is visible from the adjacent public rights-of-way. For all other districts except S-1 and I-1, such roof-mounted facilities shall not exceed the height of 40 feet, and the height may be further limited as appropriate to issuance of the conditional use permit in light of the proposed location.

- (c) *Equipment.* All elements of the wireless communications facility and any pole or tower shall be of a color that will minimize their visual impact unless concealed by a parapet, located on the rear elevation, or configured to have a minimal visual impact as seen from the street or existing residential development.
- (4) *Building, utility pole and light pole mounted wireless communications facilities.*
- (a) *Stealth facilities permitted.* Base stations that are stealth facilities may be placed inside any existing building or other existing structures (other than off-premises signs) provided that the placement does not alter the physical dimensions of the structure. Portions of base stations that are stealth facilities may be attached to the side of any building or other existing structures, other than a single-family residential units and off-premises signs. However, installation is not permitted where it would adversely affect a historically significant or environmentally sensitive structure or area, and is only permitted where other elements of the wireless communications facility and pole or support structures can be appropriately concealed by placing those elements on the rooftop, within the building, underground, or by some other means that conceals them from view. Antennas must be located at least 20 feet above ground level, and may not extend into any rights-of-way except as part of approved signage.
- (b) *Placement on existing utility poles outside of the rights-of-way.*
- (i) Antennas associated with a wireless communications facility may be placed on an existing utility pole outside of the rights-of-way. ~~The facilities must be small wireless facilities within the meaning of federal regulations, and shall be reviewed applying the standards applicable to placements on utility poles within the rights of way, colored to match or complement the color of the utility pole, and mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Except where the utility prohibits it, the antenna should be placed in a shroud at the top of the pole, with the shroud of the same circumference as the utility pole at the point of attachment. Except for such designs as may be included in the design catalogue, pole top antennas (including connectors) should not extend more than six feet above the existing utility pole. Where the antenna cannot be placed at the top of the pole, it may be placed in the communications space on a cross-arm parallel to and consistent with the placement of cross-arms on utility poles in the same corridor and with antennas and cross-arms sized and mounted to minimize their obtrusiveness. The volume of the antennas on any utility pole should not exceed three cubic feet in size.~~
- (ii) ~~Accessory equipment may not be attached to the pole, or ground-mounted absent a showing that the equipment is required, and no other placement is feasible, or less intrusive.~~
- (iii) ~~Other base station and permitted, pole-mounted accessory equipment shall be mounted in as unobtrusive a manner as technically feasible and incorporate concealment elements. Equipment should be flush-mounted to the pole, with all cabling neat and concealed. In no event shall any portion of the wireless communications facility be ground-mounted without the city's express approval, which approval may be conditioned on placing concealing the facilities in a manner appropriate to the location. Unless base station equipment is within the utility pole, in order to utilize concealment~~

- ~~elements, the equipment must be designed so that it is not readily apparent from all angles of view, so that it is mounted at a height such that it is out of pedestrian sight lines, and so that the impact on adjoining properties is minimized.~~
- ~~(iv) Neither the wireless communications facility, or the support structure shall interfere with pedestrian or vehicular movement or storage.~~
- (c) *Mounted on light poles.*
- (i) This section applies to ~~light~~ Light poles ~~poles~~ situated on private property, or public property other than the rights-of-way that are not owned or controlled by the city. ~~Other light poles require a license from the city, which license will specify the design permitted for particular light poles.~~
- (ii) Wireless communications facilities may be placed on existing ~~light~~ Light poles ~~poles~~ subject to the same conditions that apply to existing utility poles provided that:
- (1) The design and placement of all elements of the wireless communications facility is consistent with the design of the ~~light~~ Light pole ~~Pole~~ to which it will be attached and;
  - (2) The design and placement of all elements of the wireless communications facility will not adversely affect the overall design of the area within which the Light Pole is located.
  - (3) The city must know who will own and control the ~~light~~ Light pole ~~Pole~~, and who is responsible for emergency responses and ensuring the safety of the ~~light~~ Light pole ~~Pole~~.
  - (4) The applicant must have and maintain a binding contract with the entity that owns or controls the Light Pole, which may include the City. Nothing in this ordinance prevents an entity that owns or controls a Light Pole, including the City, from imposing additional or stricter standards for the design of the Light Pole than may be imposed pursuant to the regulatory conditions in the permit issued pursuant to this section.
- (d) *Replacement.* For purposes of this section, if an existing utility or ~~light~~ Light pole ~~Pole~~ must be replaced it may be replaced provided that it meets other applicable requirements of this section and:
- (i) The design of the replacement Light Pole is consistent with the design of the Light Pole that it replaces.
  - ~~(i) ii~~ In the case of the utility pole, the overall height of the pole, measured from ground level to the highest point including the ~~on the~~ wireless communications facility, does not increase by more than ~~six~~ ten feet, and the diameter measured at six feet from the butt, does not increase by more than two inches; and
  - ~~(ii) iii~~ In the case of the ~~light~~ Light pole ~~Pole~~, its overall height, measured from ground level to the highest point, including ~~on~~ the wireless communications facility, does not increase by more than ~~six~~ ten feet, and the design, height and proportions remain consistent with design of the light pole that is being replaced.
- (5) A permit will only be issued for a wireless communications facility and associated poles and support structures in the rights-of-way that are not, or will not be small wireless facilities, where the same (a) satisfy the conditions of Chapter 36; and (b) the facility is an approved stealth facility or the applicant shows that a permit must be issued to it as a matter of state or federal law.

- ~~(5) — *Special rules for placement within the public rights-of-way.* In addition to the above requirements, the following rules apply to wireless communications facilities located within the public rights-of-way.~~
- ~~(a) — Applications for placement of wireless communications facilities must be submitted to the division of public works, to the attention of the city engineer and such applications may be decided administratively. If the city engineer determines that the installation complies with the requirements of any required franchise, and this ordinance, and has been appropriately designed for the existing and publically-available planned design of the corridor in which it is placed; or where applicant shows that denial would result in an effective prohibition within the meaning of 47 U.S.C. § 332(e)(7), or otherwise violates applicable law such that the City is required to issue a permit for placement, the application may be preliminarily approved, subject to appeal, and otherwise preliminarily denied or approved subject to conditions. Preliminary decisions become final unless appealed to the zoning board of appeals.~~
- ~~(b) — Preliminary decisions adverse to the applicant may be appealed to the zoning board of appeals within five business days of a preliminary decision, and in any case where there is a claim that denial will result in an effective prohibition within the meaning of 47 U.S.C. § 332(e)(7), or otherwise violates applicable law such that the City is required to issue a permit for placement, the zoning board of appeals shall hear and determine the matter, applying standards and following procedures that would be followed in issuing a special exception.~~
- ~~(c) — Approval shall be by way of an individual, site-specific node site license jointly issued by the administrator and the city engineer (or their designees). Denials shall be in writing, based upon substantial evidence in a written record.~~
- ~~(d) — With respect to any location within the central business district or a preservation overlay district with residential character, wireless communications facilities shall be of a design approved by the design review board.~~
- ~~(e) — Wireless communications facilities shall not be located above ground in any location where the lines of the incumbent local exchange carrier are underground, unless co-located on an existing structure or an existing structure is removed and replaced with a new structure which is substantially similar in size and appearance to the structure that is being replaced.~~
- ~~(f) — Placement of wireless communications facilities in the public rights-of-way shall not result in an increase in the number of support structures located in the public rights-of-way as of the date of enactment of this ordinance with the exception of those towers permitted under section 19-4.3.2(G)(2) or new utility poles. Provided, in the case of the latter, there must be existing utility poles in the same right of way in the immediate vicinity and the applicant must demonstrate that co-location upon said existing utility poles is not feasible or would require a modification such that an additional utility pole would be less intrusive or safer. If an additional utility pole is permitted under this provision, it shall be similar in size and design to existing poles in the same right of way and in the immediate vicinity, and spaced appropriately to~~

~~minimize intrusiveness and to avoid creating undue hazard to persons or property;  
and~~

- ~~(g) — Where above ground facilities are permitted under this section 19-4.3.2(G)(4)(e) and/or (f) and the above ground facilities of the incumbent local exchange carrier are subsequently placed underground, all wireless communications facilities in the same right-of-way, in the same area shall be placed underground at the sole expense of the owner.~~
- ~~(h) — Placement of wireless communications facilities or support structures for wireless communications facilities, or any modification thereto, is not permitted where the city engineer determines that, due to insufficient capacity, safety, reliability, or engineering concerns, existing infrastructure is not adequate to support the same; or the placements or modifications will unduly interfere with other uses of the rights-of-way, or require construction that will be unduly disruptive.~~

~~\*\*\*~~

- ~~(b) — Final action approving or denying an application shall be taken within the following periods, unless applicant agrees to a different schedule, or applicable law requires a different schedule:~~
- ~~(i) — In the case of an application to place a small wireless facility (as that term is defined by FCC regulations) using an existing structure, sixty (60) days from receipt of the application, provided that the time period may be reset upon initial notification of an incomplete application, and restart upon resubmission, subject to further tolling if the application remains incomplete;~~
- ~~(ii) — Review of an application to place a small wireless facility (as that term is defined by FCC regulations), using a new structure, ninety (90) days from receipt of the application, provided that the time period may be reset upon initial notification of an incomplete application, and restart upon resubmission, subject to further tolling if the application remains incomplete;~~
- ~~(iii) — Except for applications for small wireless facilities (as that term is defined by FCC regulations) in the case of an application that does not involve modification of, or collocation upon an existing wireless communications facility, 150 days of receipt of the application, subject to tolling after notification of an incomplete application until the date when the applicant submits all the documents and information identified in the notice of incompleteness;~~
- ~~(iv) — If the application is an eligible facilities request, the administrator shall approve the application within 60 days of receipt of the application, subject to tolling after notification of an incomplete application until the date when the applicant submits all the documents and information identified in the notice of incompleteness. Any approval shall be operative, and any permit issued pursuant to this subsection shall remain in effect only so long as Federal law, 47 U.S.C. § 1455, and implementing Federal Communications Commission regulations, 47 C.F.R. §1.40001 regulations require approval of an eligible facilities request as defined herein. By approval, the city solely intends to comply with a requirement of Federal law and not to grant any property rights or interests except as compelled by Federal law;~~

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~~(v) In the case of any other application, 90 days, from receipt of the application, subject to tolling after notification of an incomplete application until the date when the applicant submits all the documents and information identified in the notice of incompleteness.~~



~~EXHIBIT B~~

(Exhibit B from first reading is stricken in its entirety and replaced by Attachment 2 below)

ATTACHMENT 2

**AN ORDINANCE TO ESTABLISH THE STANDARDS FOR  
THE PLACEMENT OF SMALL WIRELESS FACILITIES IN  
THE CITY OF GREENVILLE, SOUTH CAROLINA; AND  
MATTERS RELATED THERETO**

WHEREAS, the city of Greenville (the “City”) encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities (as defined herein) while managing the rights-of-way in a manner that promotes the interests of the public health, safety, and welfare; and,

WHEREAS, the City recognizes that Small Wireless Facilities including facilities commonly referred to as small cell and distributed antenna systems are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to residences, businesses, and schools within the City; and,

WHEREAS, the City recognizes that Small Wireless Facilities together with high capacity transport medium such as fiber optic cabling may be effectively deployed in the rights-of-way; and,

WHEREAS, by Act 179 of 2020, referred to as the South Carolina Small Wireless Facilities Deployment Act and codified as S.C. Code §§ 58-11-800 *et seq.* (the “SWF Act”), the South Carolina General Assembly has established the terms, conditions, procedures, rates, and fees upon which Small Wireless Facilities may be deployed in the rights-of-way;

WHEREAS, the City now desires to enact local terms, conditions, procedures, rates, and fees that are consistent with the SWF Act and that shall apply to the deployment of Small Wireless Facilities in the rights-of-way;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, that Title Chapter 36, Article IV of the City Code of Ordinances is hereby amended to add a new Article IV, Division 2 entitled “Standards for Placement of Small Wireless Facilities,” to read as follows:

**Section 1. Definitions.**

“Administrator” means the City employee(s) designated by the City Manager to carry out the provisions of this ordinance.

“Antenna” means (a) communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services; and (b) similar equipment used for the transmission or reception of surface waves.

“Applicable Codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes that are of general application, address public safety, and are consistent with this Ordinance.

“**Applicant**” means any person who submits an Application.

“**Application**” means a request submitted by an Applicant for a Permit to (i) Collocate Small Wireless Facilities; or, (ii) install, modify, or replace a Pole.

“**City Pole**” means a Pole owned, managed, or operated by or on behalf of the City; provided, however, that such term shall not include any Pole, Support Structure, electric transmission structure, or equipment of any type that is part of a municipally owned or municipally controlled electric plant or system for furnishing of electricity to the public for compensation. The term City Pole shall include, without limitation, Poles that the City leases, rents, licenses, or otherwise compensates the owner thereof for the provision of street lighting.

“**Collocate**” means to install, mount, maintain, modify, operate, or replace Small Wireless Facilities on or adjacent to a Pole or Support Structure. “**Collocation**” has a corresponding meaning.

“**Day**” means calendar day unless the last day for the City or an Applicant to take action under this Ordinance ends on a weekend, holiday, or time when all but City emergency services are closed due to weather or some unforeseen situation.

“**Decorative Pole**” means a Pole, including a City Pole, that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a Small Wireless Facility, public safety devices, or specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory rules or codes.

“**Design District**” means a discrete area within the jurisdiction of the City for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis among all occupants of the ROW, on the grounds that the characteristics of the discrete area warrant design and aesthetic standards that differ from those that apply to the majority of the areas within the jurisdiction of the authority. The Design Districts in existence as of the date hereof are set forth in **Exhibit A** hereto.

“**Design Manual**” means a manual or guidebook which sets forth additional aesthetic, design, concealment, and stealth requirements applicable to Small Wireless Facilities that are consistent with the SWF Act, including without limitation, the size and height requirements for Small Wireless Facilities and Poles expressly set forth under the SWF Act. The Design Manual may also, but need not, set forth examples of Small Wireless Facility deployments that the City deems to comply with this Ordinance.

“**Eligible Facilities Request**” means a request for modification of an existing tower or base station (as those terms are defined in 45 CFR §1.6100(b)) that does not involve a substantial change in the physical dimensions of such tower or base station, involving: collocation of new transmission equipment; removal of transmission equipment, or replacement of transmission equipment.

“**Fee**” means a one-time, non-recurring charge.

“**Historic District**” means a group of buildings, properties, or sites that is either:

- (a) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been

delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or

(b) a registered historic district pursuant to State law at the time the Application is submitted; or

(c) an “overlay zone,” as defined in and limited by the South Carolina Comprehensive Planning Act, (i) that has been established by the City at least sixty days prior to the relevant Application; (ii) for which the special public interest to be protected is the preservation and protection of historic and architecturally valuable districts and neighborhoods or archaeologically significant resources according to uniform design standards; and (iii) for which the City maintains and enforces objective standards that are published in advance and applied on a uniform and nondiscriminatory basis.

The Historic Districts in existence or otherwise established as of the date hereof are set forth in Exhibit A hereto.

“**Micro Wireless Facility**” means a Small Wireless Facility that (a) is not larger in dimension than twenty four inches in length, fifteen inches in width, and twelve inches in height; and (b) for which no exterior antenna that is longer than eleven inches.

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

“**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 the ROW including, but not limited to, a replacement pole and a City Pole. A Pole shall not include a support structure or electric transmission structure.

“**Rate**” means a recurring charge.

“**Right-of-Way**” or “**ROW**” means the area through, upon, over, or under a road, highway, street, sidewalk, alley, or similar property provided; however, that such term shall apply only to property or any 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 a federal interstate highway. For purposes of this Article, this definition includes rights of way owned by the South Carolina Department of Transportation (“SCDOT”) within the territorial jurisdiction of the City.

“**Small Wireless Facility**” means radio transceivers; surface wave couplers; Antennas; coaxial or fiber optic cable located on a Pole or Support Structure, immediately adjacent to a Pole or Support Structure, or directly associated with equipment located on a Pole or Support Structure and within a one hundred-foot radius of the Pole or Support Structure; regular and backup power supplies and rectifiers; and associated ancillary 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 meets both of the following qualifications:

(a) each Wireless Provider’s Antenna could fit within an enclosure of no more than six cubic feet in volume; and

(b) all other wireless equipment associated with the Small Wireless Facility,

whether ground- or pole-mounted, is cumulatively no more than twenty-eight cubic feet in volume. 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, network interface devices, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

The term “Small Wireless Facility” does not include: the Pole, Support Structure, or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; Wireline Backhaul Facilities; or coaxial or fiber optic cable that is between Small Wireless Facilities, Poles, or Support Structures or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. For purposes of this definition, in order to be considered directly associated with equipment located on a Pole or Support Structure, coaxial or fiber optic cable must not extend more than one hundred feet in radial circumference from the base of the Pole or Support Structure to which the Antenna is attached. No portion of a Small Wireless Facility may be used as a Wireline Backhaul Facility.

“**Supplemental Review Districts**” means Design Districts, Historic Districts, and Underground Districts.

“**Support Structure**” means a building, billboard, or any other structure in the ROW to which a Small Wireless Facility is or may be attached. A “Support Structure” shall not include an electric transmission structure or pole.

“**Technically Feasible**” means that by virtue of engineering or spectrum usage, the proposed placement for a Small Wireless Facility or its design, concealment measures, or site location can be implemented without a material reduction in the functionality of the Small Wireless Facility.

“**Underground District**” means a group of buildings, properties, or sites in which the City, at least sixty days prior to the relevant Application, has required all communications and electric lines in the specified geographic area to be placed underground, and for which the City maintains and enforces objective standards that are published in advance and applied on a uniform and nondiscriminatory basis. The Underground Districts in existence as of the date hereof are set forth in **Exhibit A** hereto.

“**Wireless Infrastructure Provider**” means any Person, including a Person authorized to provide telecommunications service in the State, acting to build or install wireless communication transmission equipment, Small Wireless Facilities, or Support Structures, but that is not a Wireless Services Provider.

“**Wireless Provider**” means a Wireless Infrastructure Provider or a Wireless Services Provider.

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

“**Wireless Services Provider**” means a Person who provides Wireless Services.

“**Wireline Backhaul Facility**” means an above-ground or underground wireline facility used to transport communications between a small wireless facility network interface device and a network or another small wireless network interface device.

## **Section 2. Purpose and Scope; General Provisions.**

**(a) Purpose.** The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in ROWs within the jurisdiction of the City.

**(b) Scope and Intent.** It is the intent of this Ordinance to establish uniform standards including, but not limited to:

(1) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places;

(2) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(3) Prevention of interference with other facilities and operations of facilities lawfully located in the ROWs or public property;

(4) Preservation of the character of neighborhoods where facilities are installed;

(5) Preservation of the character of and applicable land use requirements within Design Districts, Historic Districts, and Underground Districts; and

(6) Facilitation of the rapid deployment of Small Wireless Facilities to provide the citizens with the benefits of advanced Wireless Services.

**(c) Applicable only to Small Wireless Facilities.** Nothing in this Ordinance limits the City's powers with respect to wireless facilities that are not Small Wireless Facilities in the ROW, or Poles that are used for purposes other than installation of Small Wireless Facilities in the ROW; said facilities, and associated Poles and Support Structures are regulated under Chapter 36, Article IV and Section 19-4.3.2(G) of the City Code; provided that, applications for modifications to Small Wireless Facilities in the ROW that are Eligible Facilities Requests are subject to Section 4(c) of this division.

**(d) Right to Prevent Interference.** The City retains the right to require that all Small Wireless Facilities shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire, and emergency services) equipment.

**(e) Imminent Risk to Public Safety.** If the City determines that a Wireless Provider's activity in the ROW 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 twenty four 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.

## **Section 3. Permitted Use; Application Process and Fees.**

**(a) Permitted Use and Consent; Compliance with ROW Regulations General Applicability.** A Wireless Provider shall have the right, as a permitted use subject to review and conditions as set forth herein, to Collocate Small Wireless Facilities and install, maintain, modify, operate, and replace Poles in the ROW. These structures and facilities must be installed and maintained so as not to create a safety hazard; obstruct or hinder the usual travel in or the public's

safe use of the ROW; or obstruct the legal use of the ROW by utilities. All such activity shall be performed in accordance with the city's ROW regulations of general applicability set forth in Chapter 36, Article IV of the City Code and incorporated herein, except where there is an express conflict between provisions, in which case this Division 2 will apply.

**(b) Permit Required.**

(1) No person shall Collocate a Small Wireless Facility or install a new, modified, or replacement Pole or Support Structure associated with a Small Wireless Facility without first filing a Small Wireless Facility Application and obtaining a Permit as set forth herein. The City requires an Applicant to obtain additional permits required by Chapter 36 or other generally applicable provisions of the City Code. 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. Any applications for any such additional permits, once submitted, must be acted upon within the same number of days as an Application for a Permit under this Ordinance. The City shall publish and keep current a list of each additional permit that is required for the Collocation of a Small Wireless Facility or the installation of a new, modified, or replacement Pole. Any failure to comply with this subsection by a Wireless Provider shall allow the City, in its sole discretion, to restore the ROW to its condition prior to the unpermitted Collocation or installation and to charge the responsible Wireless Provider its reasonable, documented cost of restoration, plus a penalty not to exceed one thousand dollars (\$1,000). 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; 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.

(2) The foregoing notwithstanding, ROW encroachments within the corporate limits of the City under the ownership or control of the SCDOT are permitted by SCDOT and it is the practice of the SCDOT to not issue any such encroachment permit without first obtaining concurrence from the City that any proposed Collocation of a Small Wireless Facility or installation of a new, modified, or replacement Pole or Support Structure associated with a Small Wireless Facility meets the City's design and aesthetic standards. In all instances where such City concurrence is sought by the SCDOT, and the City concurs in writing with such use, which consent may be appropriately conditioned, no separate permit from the City is required. In all cases, the consent is conditioned on compliance with the City's design and aesthetic standards and the City reserves the right to enforce its design and aesthetic standards, pursuant to available remedies. Where an SCDOT ROW encroachment is not under the control of SCDOT by virtue of agreement with the City such that the SCDOT encroachment permit does not reach the particular ROW encroachment, a permit issued by the City is required.

**(c) Permit Applications.** All Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the City.

**(d) Application Requirements.** The Application shall be made by the Applicant, or its duly authorized representative, as certified in a statement from the Applicant, 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 ROW;

(5) to the extent the proposed facility involves Collocation on a Pole, Decorative Pole, or Support Structure, a structural report performed by a duly licensed engineer in South Carolina 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 approximate horizontal and vertical locations, relative to the boundaries of the ROW, of the Small Wireless Facility for which the Application is being submitted;

(8) if the Application is for the installation of a new Pole or replacement of a Decorative Pole, a certification that the Wireless Provider has determined after diligent investigation that it cannot meet the service objectives of the Application by Collocating on an existing Pole or Support Structure on which:

(A) the Wireless Provider has the right to Collocate subject to reasonable terms and conditions; and

(B) such Collocation would be Technically Feasible and would not impose significant additional costs. The Wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and shall provide a written summary of the basis for such determination;

(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, a certification that the Wireless Provider has permission from the owner to Collocate on the Pole or Support Structure;

(10) an affirmation that the Applicant is, on the same date, submitting applications for the permits identified in the list the City maintains pursuant to Section 3(b) of this Ordinance;

(11) any additional information reasonably necessary to demonstrate compliance

with the criteria set forth in Section 4(e) of this Ordinance;

(12) for any Applicant that is not a Wireless Services Provider, an attestation that a Wireless Services Provider has requested in writing that the Applicant Collocate the Small Wireless Facilities or install, modify, or replace the Pole at the requested location; and

(13) a certification from a licensed professional engineer that all Small Wireless Facilities contemplated in an application comply with applicable RF emission standards established by the federal government or any agency thereof, and a description or depiction of the relative horizontal and vertical RF emissions demonstrating compliance with applicable regulations governing RF emission standards established by the federal government or any agency thereof for the proposed site, which such description or depiction shall be submitted to the City no later than completion of the installation and in any event prior to the operation of the small wireless facilities contemplated in the application.

(e) **Routine Maintenance and Replacement.** An Application shall not be required for: (1) routine maintenance; (2) the replacement of Small Wireless Facilities with Small Wireless Facilities that are substantially similar or the same size or smaller; or (3) the installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are suspended on cables that are suspended between Poles or Support structures in compliance with Applicable Codes by a Wireless Provider that is authorized to occupy the ROW and that is remitting a consent, franchise, or administrative fee pursuant to S.C. Code Ann. § 58-9-2230. Notwithstanding the foregoing, the City requires that prior to performing any activity described above, an Applicant must apply for and receive a permit for work that requires excavation pursuant to Section 36-97 of the City Code and provide notification of any temporary closure of a street or sidewalk pursuant to Section 36-102 of the City Code. for such activity. Such a permit must be issued to the Applicant on a nondiscriminatory basis upon terms and conditions that are consistent with Applicable Codes and that apply to the activities of any other Person in the ROW that require excavation or the closing of sidewalks or vehicular lanes.

(f) **Information Updates.** Any amendment to information contained in an Application shall be submitted in writing to the City within ten (10) business days after the change necessitating the amendment.

(g) **Consolidated Application.** An Applicant seeking to Collocate Small Wireless Facilities may submit a single consolidated Application, provided that such a consolidated Application shall be for a geographic area no more than two miles in diameter and for no more than thirty Small Wireless Facilities. In such case, the Applicant may receive a single Permit for the Collocation of multiple Small Wireless Facilities. The denial of one or more Small Wireless Facilities in a consolidated Application must not delay processing of any other Small Wireless Facilities in the same consolidated Application. Solely for purposes of calculating the number of Small Wireless Facilities in a consolidated Application, a Small Wireless Facility includes any Pole on which such Small Wireless Facility will be collocated.

(h) **Application Fees.** The City hereby determines that the following Fees for Applications are reasonable and nondiscriminatory and do not recover more than the City's direct costs for processing an Application. For each Application, the City hereby imposes Fees as follows:



(1) \_\_\_\_\_ for Applications to Collocate Small Wireless Facilities on existing Poles or Support Structures, one hundred dollars (\$100) each for the first five Small Wireless Facilities in the same Application and fifty dollars (\$50) for each additional Small Wireless Facility in the same Application;

(2) \_\_\_\_\_ for Applications to Collocate Small Wireless Facilities on new Poles, one thousand dollars (\$1,000) for each Pole, which Fee covers both the installation of the new Pole and the Collocation on the new Pole of associated Small Wireless Facilities; and

(3) \_\_\_\_\_ for Applications to Collocate Small Wireless Facilities on modified or replacement Poles, two hundred fifty dollars (\$250) for each Pole, which Fee covers both the modification or replacement of the Pole and the Collocation on the Pole of associated Small Wireless Facilities.

The Application Fee shall apply to a Wireless Provider regardless of whether the Wireless Provider is subject to a business license tax that is or may be imposed upon it pursuant to S.C. Code Section 58-9-2220 or a franchise, consent, or administrative fee that is or may be imposed upon it pursuant to S.C. Code Section 58-9-2230. The Application Fee shall apply to a Communications Service Provider regardless of whether the Communications Service Provider is subject to a franchise fee that is or may be imposed upon it pursuant to S.C. Code Section 58-12-330.

(i) **Consultant Fees.** To the extent that the City engages one or more consultants to assist in review of Applications, the City shall impose a Fee for such Applications to the extent permitted by, and calculated in accordance with, S.C. Code Section 58-11-850(D)(4).

#### **Section 4. Action on Permit Application.**

(a) **Notice of Incompleteness.** Within ten days of receiving an Application, the City must determine and notify the Applicant in writing whether the Application is complete. If an Application is incomplete, the City shall specifically identify the missing information in writing. The processing deadline set forth in Section 4(b) below is tolled from the time the City sends the notice of incompleteness to the time the Applicant provides the missing information. The processing deadline also may be tolled by agreement of the Applicant and the City, confirmed in writing.

(b) **Time Requirements for Review of Applications.** An Application must be processed on a nondiscriminatory basis. The following shall apply to all Applications except those for Eligible Facilities Requests which are addressed below in Section 4(c). The City shall make its final decision to approve or deny the Application within sixty (60) days of receipt of a complete Application for Collocation of Small Wireless Facilities and within ninety (90) days of receipt of a complete Application for the installation, modification, or replacement of a Pole and the collocation of associated Small Wireless Facilities on the installed, modified, or replaced Pole. If the City fails to act on an Application within the applicable time period, the Applicant may provide the City written notice that the time period for acting has lapsed. The City shall then have twenty (20) days after receipt of such notice to render its written decision. The Application shall be deemed to have been approved by passage of time and operation of law if the City does not render its written decision within the noticed twenty (20) days. If applicable law establishes a shorter period or different requirements for action, City shall comply with applicable law, but the remedy for non-compliance will be the remedy established by that applicable law.

(c) **Eligible Facilities Requests.** If the Application is an Eligible Facilities Request, the administrator shall approve the Application within 60 days of receipt of the Application,

subject to tolling after notification of an incomplete application until the date when the Applicant submits all the documents and information identified in the notice of incompleteness. Any approval shall be operative, and any permit issued pursuant to this subsection shall remain in effect only so long as Federal law, 47 U.S.C. § 1455, and implementing Federal Communications Commission regulations, 47 C.F.R. §1.40001 require approval of an Eligible Facilities Request. By approval, the City solely intends to comply with a requirement of Federal law and not to grant any property rights or interests except as compelled by Federal law.

(d) **Notice in Writing Required.** The City shall notify the Applicant in writing of its final decision. If the Application is denied, the City shall specify the basis for a denial, including citations to federal, state, or local code provisions and/or statutes on which the denial was based.

(e) **Right to Cure.** The Applicant may cure the deficiencies identified by the City and resubmit the Application within thirty (30) days of the denial without paying an additional Application Fee. The City shall approve or deny the revised Application within thirty (30) days of resubmission and limit its review to the deficiencies cited in the denial. If the City fails to act on a revised Application within this thirty-day period, the Applicant may provide the City written notice that the time period for acting has lapsed, and the City shall then have five (5) days after receipt of such notice to render its written decision approving or denying the revised Application. The revised Application shall be deemed to have been approved by passage of time and operation of law if the City does not render its written decision within the noticed five (5) days.

(f) **Permissible Bases for Denial.** The City may deny an Applicant's proposed Collocation of a Small Wireless Facility or a proposed installation, modification, or replacement of a Pole, Decorative Pole, or Support Structure only if the proposed collocation, installation, modification, or replacement:

(1) interferes with the safe operation of traffic control or public safety equipment;

(2) interferes with sight lines or clear zones for transportation or pedestrians;

(3) interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(4) requests that ground-mounted Small Wireless Facility equipment be located more than seven and one-half feet in radial circumference from the base of the Pole, Decorative Pole, or Support Structure to which the Antenna is to 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;

(5) fails to comply with the height limitations permitted by this Ordinance or adopted in the Design Manual or with reasonable and nondiscriminatory horizontal spacing requirements of general application adopted by an enactment that concern the location of ground-mounted equipment and new Poles;

(6) designates the location of a new Pole or Support Structure for the purpose of Collocating a Small Wireless Facility within seven feet in any direction of an electrical conductor, unless the Wireless Provider obtains the written consent of the power supplier

that owns or manages the electrical conductor;

(7) fails to comply with Applicable Codes;

(8) fails to comply with the requirements applicable to the aesthetic, stealth, and concealment requirements contained in this Ordinance, with the requirements applicable to Supplemental Review Districts, or with the Design Manual, provided, however, that no Application shall be denied on the basis of requirements applicable to Supplemental Review Districts or the Design Manual that are not permitted under the SWF Act;

(9) fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements;

(10) fails to comply with laws of general applicability that address the occupancy or management of the ROW and that are not otherwise inconsistent with this article; or

(11) fails to comply with applicable regulations governing RF emission standards established by the federal government or any agency thereof.

(g) **Requirement to Replace or Upgrade.** The City may not require a Wireless Provider to replace or upgrade an existing Pole except for reasons of structural necessity, compliance with Applicable Codes, or compliance with this Ordinance or the Design Manual. A Wireless Provider may, with the permission of the Pole owner, replace or modify existing Poles, but any such replacement or modification must be consistent with the design aesthetics of the Poles being modified or replaced.

(h) **Compensation.** Subject to the limitations set forth herein, every Permit shall include as a condition the Applicant's agreement to pay such lawful franchise fees, business license taxes, administrative fees, and consent fees as are permitted under applicable South Carolina and federal law. The Applicant shall also pay all applicable *ad valorem* taxes, service fees, sales taxes, or other taxes and fees as may now or hereafter be lawfully imposed on other businesses within the City.

**Section 5. Requirements for Small Wireless Facilities; New, Modified, or Replacement Poles; Decorative Poles.**

(a) **Administrative Review.** The City shall perform an administrative review of Applications including the location or installation of new, modified, or replacement Poles and/or Support Structures and the Collocation of Small Wireless Facilities and equipment on Poles or Support Structures. Review factors, in addition to location, shall include the size, shape, color, texture, and materials of the structures and attachments.

The City may require that a proposed Small Wireless Facility or new, modified, or replacement Pole be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) than existing facilities, structures, equipment, and Poles located within five hundred (500) linear feet on the same ROW as the subject Small Wireless Facility, Pole, or Support Structure.

(1) Where Small Wireless Facilities are determined to be appropriate, the use of reasonable stealth and concealment treatments, low-profile equipment and control

boxes, and screening may be required to avoid significant negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the City upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or concealment treatments or imposes an excessive expense.

(3) Supplemental Review Districts identified in Section 5(c) may be subject to a higher level of administrative review pursuant to the requirements of this ordinance or the Design Manual.

(4) The City may maintain a Design Manual which sets forth additional aesthetic, design, concealment, and stealth requirements applicable to Small Wireless Facilities, and other wireless facilities. The Design Manual may also, but need not, set forth examples of Small Wireless Facilities and other wireless deployments that the City deems to comply with this Ordinance, and provide a means for pre-approval of designs that are suitable for a particular location, even if not strictly compliant with the design, placement, and aesthetic requirements of this Ordinance provided the design otherwise serves the goals of this Ordinance. The Design Manual and any revisions thereto may be adopted by way of a resolution of the City Council.

(b) **Maximum Size of Permitted Use.**

(1) New Small Wireless Facilities (including any related Antenna) in the ROW may not extend more than ten feet above an existing Pole in place as of the effective date of this Ordinance, or for Small Wireless Facilities (including any related Antenna) on a new Pole, above the height permitted for a new pole pursuant to this section.

(2) Each new (where allowed by Section 5(b)(4) below), modified, or replacement Pole installed in the ROW may not exceed the greater of ten feet in height above the tallest existing Pole in place as of the effective date of this Ordinance located within five hundred feet of the new, modified, or replacement Pole in the same ROW, or fifty feet above ground level except in Design Districts and Historic Districts where the height limit is forty feet above ground level.

(3) For Applications to place Poles in residential zoning districts to deploy small wireless facilities, the City may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the Application, and the Wireless Provider shall use the City's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(4) Collocation is not allowed on a Decorative Pole less than twenty feet in height. Where a new Decorative Pole would otherwise be allowed under this ordinance the height of the new Decorative Pole in such areas shall be no higher than necessary to make the deployment Technically Feasible and the design of the new Decorative Pole shall match as closely as possible the design of the existing Decorative Poles in the corridor as provided for in this Ordinance and the Design Manual.

(5) New Poles are not permitted in a corridor where there are existing poles that

can be used, [or existing poles that can be modified or replaced to support the facilities of a utility], where the Applicant can demonstrate:

(A) it is not Technically Feasible to use, modify or replace existing Poles or such modification or replacement would impose significant additional costs, as certified by the utility in good faith based on the assessment of an engineer licensed in South Carolina along with a written summary of the basis for the certification; or

(B) a new Pole may be placed in a manner such that it will not cause interference for transportation or pedestrians in the rights-of-way.

(c) **Supplemental Review Districts.** Collocated Small Wireless Facilities and new, modified, or replacement Poles or Support Structures located in Supplemental Review Districts shall be subject to the design and aesthetic requirements as specified in the Design Manual and/or compliant provisions (as that term is defined in the SWF Act) pertaining to design and aesthetic standards otherwise applicable to the Supplement Review Districts in addition to the requirement of this Ordinance. In addition, the following rules shall apply within the Supplemental Review Districts.

(1) **Underground Districts.** A Wireless Provider shall comply with reasonable and nondiscriminatory requirements that prohibit the installation of poles in the ROW in an Underground District where: (A) no less than sixty days prior to the submission of the Application, the City has required all such lines to be placed underground; (B) Poles the City allows to remain are made available to Wireless Providers for the Collocation of Small Wireless Facilities and may be replaced by a Wireless Provider to accommodate the Collocation of Small Wireless Facilities in compliance with this Ordinance; and (C) a Wireless Provider is allowed to install a new Pole when it is not able to provide Wireless Services by Collocating on a remaining Pole or Support Structure. Nothing in this section shall prohibit the use or replacement of existing Poles or Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to appropriate design and concealment measures and the height limitations set forth above in Section 5(b)(1) & (2), or as may be established through an enforceable agreement for use of City Poles.

For any such Application to install a new Pole in an Underground District, the City may propose an alternate location in the ROW within one hundred fifty (150) feet of the location set forth in the Application. The Wireless Provider shall use the City's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination. For Small Wireless Facilities installed before the City establishes an Underground District, the City shall either permit Wireless Providers to maintain the Small Wireless Facilities in place, or permit the Wireless Provider to replace the associated Pole within fifty (50) feet of the prior location. In the latter case, the Wireless Provider shall allow other communications service providers with attachments on the existing Pole to place those attachments on the replacement Pole under the same or reasonably similar fees, rates, terms, and conditions as applied to those attachments on the existing Pole.

(2) **Historic and Design Districts.** The City may require reasonable, Technically

Feasible, nondiscriminatory, and technologically neutral design and aesthetics requirements, stealth requirements, height limitations of no less than forty feet, and/or concealment measures in a Design District or Historic District. For Applications to place Poles in a Design District or a Historic District to deploy Small Wireless Facilities, the City may propose an alternate location in the ROW within one hundred fifty (150) feet of the location set forth in the Application. The Wireless Provider shall use the City's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

This section may not be construed to limit a City's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

(d) *Appeal.* Appeals of administrative decisions pertaining to Applications under this Ordinance shall be heard and decided by the Planning Commission in accordance with the procedures set forth in Chapter 19 of the City Code.

(e) *Existing Supplemental Review Districts.* Supplemental Review Districts approved by the City as of the effective date of this Ordinance are listed in **Exhibit A**. Nothing in this Ordinance shall prohibit or otherwise limit the City from establishing additional Supplemental Review Districts, provided however, that facilities and structures for which a Permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the additional Supplemental Review District remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures as set out herein. If a Wireless Provider voluntarily replaces such facilities in a manner that does not comply with Section 3(e) of this Ordinance, or if a Wireless Provider voluntarily relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the additional Supplemental Review District.

(f) *Decorative Poles.* Subject to the City's ability to deny an Application as set forth in this Ordinance and the provisions of the pole attachment agreement between the City and the Wireless Provider which must be in place prior to any Collocation on, or replacement of, Decorative Poles which are also City Poles, a Wireless Provider must be permitted to Collocate on or replace Decorative Poles when necessary to deploy a Small Wireless Facility.

(1) The City may require the Collocation on a Decorative Pole or the replacement of a Decorative Pole to reasonably conform to the design aesthetics of the original Decorative Pole, provided these requirements are Technically Feasible.

(2) For Applications to Collocate Small Wireless Facilities on Decorative Poles or to replace Decorative Poles to deploy Small Wireless Facilities, the City may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the Application. The Wireless Provider shall use the City's proposed alternate location unless the location is not Technically Feasible or imposes significant additional costs. The Wireless Provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written

summary of the basis for such determination.

(g) **Repair of Damage.** A Wireless Provider shall repair all damage to the ROW directly caused by the activities of the Wireless Provider in the ROW and shall restore the ROW to its condition before the damage occurred in accordance with Section 36-109 of the City Code and the remedies set forth therein and in this division. If within thirty (30) calendar days after written notice the Wireless Provider fails to the extent practicable in the reasonable judgment of the City to restore the ROW to its condition prior to the damage in compliance with this subsection, the City may, at the sole discretion of the City, restore the ROW to such condition and charge the applicable party the reasonable, documented cost of the restoration, plus a penalty not to exceed five hundred dollars (\$500) provided; however, that the Wireless Provider may request additional time to make such repairs, and the City shall not unreasonably deny such a request. 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, if any provided, however, that the authority 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 the Administrative Law Court..

#### **Section 6. Effect of Permit; Occupancy and Use Fees.**

(a) **Authority Granted: No Property Right or Other Interest Created.** A Permit from the City authorizes an Applicant to undertake only certain activities in accordance with this Ordinance and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the ROW.

(b) **Duration.** Installation or collocation for which a Permit is granted pursuant to this Ordinance must be completed within one year of the Permit issuance date unless the City and the Applicant agree to extend this period, or a delay is caused by the lack of commercial power or by the lack of communications facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the Applicant. Approval of an Application authorizes the Applicant to: (1) undertake the installation or collocation; and (2) subject to applicable relocation requirements and the Applicant's right to terminate at any time, operate and maintain the Small Wireless Facilities and any associated Pole covered by the Permit for a period of ten years, subject to renewal so long as the installation or collocation is in compliance with the conditions of the permit, and the Small Wireless Facility and any associated Pole, as renewed, would satisfy the criteria set forth under then-applicable laws and regulations. The City retains the right to attach appropriate additional conditions to any renewal.

(c) **Unless a condition is expressly limited in the permit, any permit conditions, including any conditions designed to reduce the visibility of the Small Wireless Facility and associated Pole, or to make any portion of the same appear to be something other than a Small Wireless Facility, shall apply for the entirety of the permit term, and shall include a duty to maintain and replace components as necessary to ensure continued compliance. By way of example and not limitation, a requirement that a Small Wireless Facility be painted a certain color to match the supporting structure requires the permittee to repaint as necessary to maintain the match.**

(d) **Occupancy and Use Fees.** The City hereby determines that the following Rates for occupancy and use are reasonable and nondiscriminatory. For each Small Wireless Facility, the City hereby imposes the following Rates:

(1) one hundred dollars (\$100) per year for each Small Wireless Facility Collocated on any existing or replacement Pole, including an existing or replacement City Pole; and

(2) two hundred dollars (\$200) per year for each Small Wireless Facility Collocated on a new Pole, other than a replacement Pole, which two hundred dollar (\$200) Rate shall cover the new Pole and the Small Wireless Facility Collocated on it.

These Rates shall apply to a Wireless Provider regardless of whether the Wireless Provider is subject to a business license tax that is or may be imposed upon it pursuant to S. C. Code Section 58-9-2220 or a franchise, consent, or administrative fee that is or may be imposed upon it pursuant to S.C. Code Section 58-9-2230. These Rates shall apply to a Communications Service Provider regardless of whether the Communications Service Provider is subject to a franchise fee that is or may be imposed upon it pursuant to S.C. Code Section 58-12-330.

**Section 7. Removal, Relocation or Modification of a Small Wireless Facility in the ROW.**

(a) **Widening, Repair, Reconstruction, and Relocation.** 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 as a result of a public project, a Wireless Provider shall relocate Poles and Support Structures that such Wireless Provider has installed in the ROW for the Collocation of Small Wireless Facilities at no cost to the City pursuant to Section 36-113 of the City Code if 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.

(b) **Emergency Removal or Relocation of Facilities.** The City retains the right to cut or move any Small Wireless Facility, Pole, or Support Structure located within the ROW as the City, in its reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency pursuant to Section 36-113 of the City Code.

(c) **Abandonment of Facilities.** The Applicant or the Person that owns or operates the Small Wireless Facility collocated in the ROW may remove its Small Wireless Facilities at any time from the ROW upon not less than thirty (30) days' prior written notice to the City and may cease paying to the City any applicable Fees and Rates for such use, as of the date of the actual removal of the Small Wireless Facilities. In the event of such removal, the ROW shall be, to the extent practicable in the reasonable judgment of the City, restored to its condition prior to the removal. If the Applicant fails, to the extent practicable in the reasonable judgment of the City, to return the ROW to its condition prior to the removal within ninety (90) days of the removal, the City may, at the sole discretion of the City, restore the ROW to such condition and charge the Applicant the City's reasonable, documented cost of removal and restoration, plus a penalty not to exceed five hundred dollars (\$500). The City may suspend the ability of the Applicant to receive any new Permits from the City until the Applicant has paid the amount assessed for such restoration. 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.

(d) **Abandonment by Inaction.** At any point when a Wireless Provider fails to pay any required Fee or Rate, and fails to respond within sixty (60) days to a written inquiry from the City as to whether the Wireless Provider intends to continue to operate a Small Wireless Facility or Support Structure, for whatever reason, the Small Wireless Facility shall be deemed abandoned



and the City may, at its sole option, remove all or any portion of the Small Wireless Facility or Support Structure, or take other action as authorized by law, including recovery of actual costs incurred in removing the Small Wireless Facility or Support Structure.

**Section 8. Attachment to City Poles.**

(a) **Annual Rate.** The rate to Collocate a Small Wireless Facility on a City Pole shall be fifty dollars (\$50) per year. This rate is in addition to reimbursement to the City for any expenses for make-ready work. The City requires a pole attachment agreement to further define the terms and conditions of attachments to City Poles. The rates specified in this section shall not apply to poles owned, or operated and accounted for as an asset of, a municipal electric utility.

(b) **Make-Ready.** The Rates, Fees, terms, and conditions for make-ready work to Collocate on or replace a City Pole shall be established by way of a separate pole attachment agreement between the City and the Wireless Provider which shall agreement shall generally include, but not be limited to, the following: .

(1) The City will require the Wireless Provider to perform, or cause to be performed, all necessary and required make-ready work, including Pole replacement where required, at the Wireless Provider's sole expense. The Wireless Provider or its contractor performing such make-ready work shall indemnify the City for any negligence by the Wireless Provider or its contractor in the performance of such make-ready work and the work shall otherwise comply with applicable law.

(2) The City may require replacement of the City Pole only if it demonstrates that the Collocation would make the City Pole structurally unsound or replacement is required in order to meet the design and aesthetic standards set forth in this Ordinance or the Design Manual as said standards apply to Decorative Poles that are also City Poles.

(3) The Person owning, managing, or controlling the City Pole must not require more make-ready work than required to meet Applicable Codes, industry standards, or the design and aesthetic standards set forth in this Ordinance or the Design Manual as said standards apply to Decorative Poles that are also City Poles. Fees assessed by or on behalf of a City for make-ready work, including any Pole replacement, must not include costs related to preexisting or prior damage or noncompliance; exceed either actual costs or the amount charged to other communications service providers for similar work on similar types of City Poles; or include any revenue or contingency-based consultant's fees or expenses of any kind.

(4) A Wireless Provider collocating on a City Pole is responsible for reimbursing third parties for their actual and reasonable costs of any make-ready work reasonably required by the third party to accommodate the Collocation.

(5) The City will incur no additional expense as the result of the Collocation or replacement and the City's rights as the primary user are preserved.

(c) **Municipal Utilities Excluded.** Nothing in this section shall be construed to affect the authority of a municipal electric utility to deny, limit, restrict, or determine the Rates, Fees, terms, and conditions for the use of or attachment to a Pole owned, or operated and accounted for as an asset of, a municipal electric utility.

(e) **Non-Exclusivity; Non-Discrimination.** A Person owning, managing, or controlling City Poles in the ROW may not enter into an exclusive arrangement with any Person for the right to attach to such poles. Subject to a City's ability to deny an Application as set forth in this Ordinance, a City shall allow the Collocation of Small Wireless Facilities on City Poles on nondiscriminatory terms and conditions.

(f) Nothing in this Section affects any existing agreement for attachments to City Poles, the terms of which shall remain in place for their term except as prohibited by application law.

### **Section 9. Registration, Indemnification, Insurance, and Bonds.**

(a) **Registration.** All Wireless Providers shall register with the City in accordance with Section 36-94 of the City Code. No additional fee shall apply for such registration.

(b) **Indemnity.** With regard to Small Wireless Facilities, Poles, and Support Structures that are subject to this Ordinance, the 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, to the extent that a court of competent jurisdiction finds that the negligence of the Wireless Provider while siting, installing, maintaining, repairing replacing, relocating, permitting, operating, or locating Small Wireless Facilities, Poles, and Support Structures pursuant to this Ordinance caused the harm.

(c) **Insurance.** The City requires all Wireless Providers to have in effect insurance coverage in the types and limits required by Section 36-96 of the City Code. The City may require a Wireless Provider to furnish proof of insurance prior to the effective date of a Permit. The City may not require a Wireless Provider to obtain insurance naming the City or its officers and employees as additional insureds.

(c) **Bonds.** The City requires bonds for Small Wireless Facilities in the ROW. Such bonds shall provide for the removal of abandoned or improperly maintained Small Wireless Facilities, including those that the City determines must be removed to protect public health, safety, or welfare; restoration of the ROW; and recoupment of Rates or Fees that have not been paid by a Wireless Provider in over twelve months. Bonding requirements may not exceed two hundred dollars (\$200) per Small Wireless Facility. For Wireless Providers with multiple Small Wireless Facilities within the City, the total bond amount across all facilities may not exceed ten thousand dollars (\$10,000) and that amount may be combined into one bond instrument.

### **Section 10. Applicability of the City's ROW Management Ordinances of General Applicability.**

In addition to those sections of Chapter 36, Article IV referenced above and for the avoidance of doubt, all activity permitted under this Ordinance shall be subject to the following ROW ordinances of General Applicability in the same manner as all other utilities:

- e. Section 36-102 (notification of temporary street or sidewalk obstruction);
- f. Section 36-105 (depth of underground facilities);
- g. Section 36-107 (removal of excavated material and surface restoration);
- h. Section 36-108 (location and protection of existing utilities);
- i. Section 36-109 (backfilling and restoration of excavation);
- j. Section 36-36-110 (barricades, working hours, and cover plates);

- k. Section 36-111 (location and non-interference);
- l. Section 36-112 (erosion control);
- m. Section 36-114 (progress of work);
- n. Section 36-115 (non-interference with traffic and pedestrians);
- o. Section 36-116 (filing and maintenance of facilities maps and locations);
- p. Section 36-117 (cooperation with city surveyor);
- q. Section 36-118 (transfer or assignment of facilities);
- r. Section 36-121 (coordination and planning)
- s. Section 36-122 (access to information);
- t. Section 36-123 (prohibited excavations);
- u. Section 36-124 (public notification prior to commencement of work); and
- v. Any other ROW management ordinance of general applicability adopted after the effective date of this Ordinance.

### **Section 11. Violations**

In addition to any specific right or remedy of the City set forth above, violations of this Ordinance shall be subject to the penalties and remedies set forth in Section 36-120 of the City Code.

### **Section 12. Severability.**

In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or work of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

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**Exhibit A****Supplemental Review Districts****Design Districts:**

- c. that geographic area comprised of property zoned C-4: Central Business District;
- d. that geographic area comprised of property within any Preservation Overlay (PO) District to the extent they are not already considered historic districts for purposes of the SWF Act;
- e. that geographic area comprised of property zoned Unity Park Neighborhood District Character Code (UPNDCC); and
- f. that geographic area comprised of property within any Neighborhood Revitalization Overlay (NRO) District.

**Underground Districts:**

- a. that geographic area comprised of property zoned C-4: Central Business District;
- b. that geographic area comprised of property zoned Unity Park Neighborhood District Character Code (UPNDCC);
- c. the Verdae development;
- d. Haywood Road from its intersection with I-385 down to 533 Haywood Road;
- e. the Clemson University International Center for Automotive Research to include the Millennium Boulevard corridor and its surrounds;
- f. the Arcadia Hills neighborhood;
- g. West Washington Street from its intersection with Academy Street up to Mulberry Street; and
- h. Viola Neighborhood.