

**AN ORDINANCE ENACTING AS CHAPTER 917 WITHIN PART NINE, TITLE ONE OF THE CODIFIED ORDINANCES REGULATIONS AND RELATED FEES WITHIN THE CITY OF CORTLAND FOR SMALL CELL FACILITIES AND DECLARING AN EMERGENCY.**

**WHEREAS**, the residents of the City of Cortland expect and require City ordinances to be up to date and reflect the current practices and processes of the City; and

**WHEREAS**, the State of Ohio has approved and the Governor has signed HB 478, the small cell facilities bill which permits municipalities to enact provisions regulating the use and placement of small cell facilities in its right of way; and,

**WHEREAS**, City Council has considered the new state law and believes that enacting new provisions in Cortland relative to small cell facilities is in the best interest of the City.

**NOW, THEREFORE:**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CORTLAND, OHIO:**

**Section 1.** That the City of Cortland Codified Ordinances, specifically Part Nine, Title One, are hereby amended by creating and adding Chapter 917 Small Cell Facility, regulations:

**PURPOSE AND INTENT**

The purpose of this Chapter is to establish general procedures and standards for the siting, construction, placement, collocation, modification, operation, and removal of small cell facilities and/or wireless support structures within the City of Cortland.

The goals of this chapter are to:

- A. Provide standards for the siting, construction, placement, collocation, modification, operation, and removal of small cell facilities and wireless support structures within the City.
- B. Establish criteria for making application to promote fair and efficient processing of applications.
- C. Ensure that small cell facilities and wireless support structures conform to all applicable health and safety regulations.
- D. Preserve the character of the City’s neighborhoods and/or historic districts and historic properties by limiting the overall number of facilities within the City’s Right of Way.
- E. Reduce visual clutter and preserve and enhance the aesthetic environment of the City.
- F. Ensure the safety of motorists, pedestrians, and other users of the City’s Rights of Way by limiting the placement and overall number of facilities within close proximity to roadways, sidewalks, or other such ways of travel.
- G. Establish a fair and reasonable method to recover costs incurred in administering this Chapter.

The Service Director shall be the principal City official responsible for the administration of this chapter except as otherwise provided herein. The Service Director may delegate any or all of the duties hereunder to an official designee.

**DEFINITIONS**

Except as specifically defined below, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future tense; the singular number includes the plural.

**Abandoned**

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

**Agent**

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

**Antenna**

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

**Applicant**

Any person that submits an application to the City to site, construct, place, collocate, modify, operate,, and/or remove a small cell facility or wireless support structure in the City.

**Cable operator, cable service, franchise**

These words have the same meanings as in the “Cable Communications Policy Act of 1984,” 98 Stat. 2779, 47 U.S.C.A. 522.

**Certificate of Registration for Small Cell**

A certificate from the City providing consent to obtain a permit to collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along, across, upon, and/or under the Right of Way.

**City**

The City of Cortland.

**City Council**

The seven members of City Council, duly elected to serve within the City of Cortland.

**Collocation, collocate**

To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure or utility pole.

**Decorative pole**

A pole, arch, or structure other than a street light pole placed in the Right of Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

- A. Electric lighting;
- B. Specially designed informational or directional signage;
- C. Temporary holiday or special event attachments.

**Enclosure**

A cabinet for equipment intended to conceal its contents, prevent electrical shock to users, and protect the contents from the environment.

**Equipment**

Electrical and/or mechanical devices or components.

**Historic District**

A building, property, or site, or group of buildings, properties, or sites that are either of the following:

- 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;
- B. A registered historic district as defined in Section 149.311 of the Ohio Revised Code.

**Micro wireless facility**

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

**Municipal Electric Utility**

The same meaning as in Section 4928.01 of the Ohio Revised Code.

**Ohio Manual of Uniform Traffic Control Devices**

The uniform system of traffic control devices promulgated by the department of transportation pursuant to Section 4511.09 of the Ohio Revised Code.

**Occupy, use**

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

**Permittee**

A person issued a permit.

**Person**

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

**Public Utility**

A wireless service provider as defined in division (A)(20) of Section 4927.01 of the Ohio Revised Code or any company described in Section 4905.03 of the Ohio Revised Code except in divisions (B) and (I) of that Section, which company also is a public utility as defined in Section 4905.02 of the Ohio Revised Code; and includes any electric supplier as defined in Section 4933.81 of the Ohio Revised Code.

**Public Way Fee**

A fee levied to recover the costs incurred by the City and associated with the occupancy or use of a Right of Way.

**Right of Way, Public Way**

The surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after, July 2, 2002, is owned or controlled by a municipal corporation. "Right of Way" excludes a private easement.

**Service Director**

The Service Director duly appointed and serving the City of Cortland, or his/her official designee.

**Small Cell Facility**

A wireless facility that meets both of the following requirements:

- A. Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than 6 cubic feet in volume.
- B. All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

**Small Cell Facility Operator, Operator**

A wireless service provider, or its designated agent, or cable operator, or its designated agent, that operates a small cell facility and provides wireless service as defined in division (T) of Section 4939.01 of the Ohio Revised Code. For the purpose of this chapter, “operator” includes a wireless service provider or cable operator that provides information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C.153(20), and services that are fixed in nature or use unlicensed spectrum.

**Substantial Change**

Substantial change means the same as defined by the FCC in 47 C.F.R. §1.40001 (b)(7), as may be amended, and as applicable to facilities in the public right of way, which defines that term as a collocation or modification that:

- A. Increases the overall height more than 10% or 10 feet (whichever is greater);
- B. Increases the width more than 6 feet from the edge of the wireless support structure;
- C. Involves the placement of any new enclosures on the ground when there are no existing ground-mounted enclosures;
- D. Involves the placement of any new ground-mounted enclosures that are ten percent (10%) larger in height or volume than any existing ground-mounted enclosures;
- E. Involves excavation or deployment of equipment outside the area in proximity to the installation and other wireless communications equipment already deployed on the ground;
- F. Would defeat the existing concealment elements of the wireless support structure as determined by the Service Director; or
- G. Violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, enclosures or excavation that is inconsistent with the thresholds for a substantial change.

This definition of Substantial Change applies to installations in the public right of way. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted wireless support structure without regard to any increases in size due to deployments, the cumulative limit is measured from the permitted site dimensions as they existed on the effective date of legislation enacting this Chapter.

**Utility Easement**

An easement dedicated for the use of a Public Utilities Commission of Ohio regulated utility.

**Utility pole**

A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric distribution or telecommunications service. The term excludes street signs and decorative poles.

**Video service provider**

A video service provider as described in Section 1332.21 of the Revised Code.

**Wireless Facility**

Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

- A. Equipment associated with wireless communications;
- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- C. The term includes small cell facilities.
- D. The term does not include any of the following:
  1. The structure or improvements on, under, or within which the equipment in collocated;
  2. Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

**Wireless service**

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

**Wireless Service Provider**

A person who provides wireless service as defined in division (A)(20) of Section 4927.01 of the Ohio Revised Code.

**Wireless Support Structure**

A pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a 15' or taller sign pole, or utility pole capable of supporting wireless small cell facilities. As used in Section 4939.031 of the Ohio Revised Code this chapter, "wireless support structure" excludes all of the following:

- A. A utility pole or other facility owned or operated by a municipal electric utility;
- B. A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

**Permit, Work permit**

A "revocable Street Privilege Permit" issued by the City that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the Right of Way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the Right of Way.

**APPLICABILITY**

No small cell facility operator may collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along, across, upon, and/or under the Right of Way except in conformance with all provisions of this Chapter and any other applicable requirements of the City.

**PROCEDURES****Permit Required**

Unless otherwise exempted, it shall be unlawful for any person to collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along, across, upon, and/or under the Right of Way unless a Permit has been issued by the Service Director.

Pursuant to R.C. 4939.0311(C), a cable or video service provider shall not be required to obtain permits from the City or to pay fees, with the exception of work permits and associated fees, to place, operate, maintain, or replace micro wireless facilities pursuant to an existing franchise or video service authorization under Chapter 1332 of the Revised Code; nor shall a holder of an existing franchise or video service authorization be required to obtain additional authorizations or to pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization under Chapter 1332 of the Revised Code.

**Application Requirements**

This Section specifies the necessary requirements for a complete Certificate of Registration for Small Cell application. A complete Certificate of Registration for Small Cell application shall consist of the following:

- A. Application Fee – the applicant must provide the applicable permit application fee in the amount currently required by the Service Director and listed in its permit fee schedule.
- B. RF Compliance Affidavit – Applicants must submit a sworn affidavit prepared and signed by an RF engineer with knowledge about the proposed project that affirms the proposed project will be compliant with all regulations pertaining to radio frequency emissions and exposure to such emissions of the federal communications commission.
- C. Regulatory Authorization – to the extent that the applicant claims any regulatory authorization or other right to use the public right of way, the applicant must provide a true and correct copy of the certificate, license, notice to proceed or other regulatory authorization that supports the applicant's claim.
- D. Owner's Authorization – applicants must submit evidence sufficient to show that either:
  - 1. The applicant owns the proposed support structure; or
  - 2. The applicant has obtained the owner's authorization to file the application.
- E. Site Plans and Structural Calculations. The applicant must submit fully dimensioned site plans, elevation drawings and structural calculations prepared, sealed, stamped and signed

by a Professional Engineer licensed and registered by the State of Ohio. Drawings must depict any existing wireless facilities with all existing wireless communications equipment and other improvements, the proposed facility with all proposed wireless communications equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed facility and any associated access or utility easements.

- F. Equipment and Enclosure Specifications. The applicant shall provide dimensioned elevations, cut sheets, material samples or other construction documents necessary to evaluate for compliance with this chapter.

### **Application Type**

- A. Each Certificate of Registration for Small Cell application to collocate or remove a small cell facility or construct, maintain, modify, operate, replace, or remove wireless support structures in, along, across, upon, and/or under the Right of Way shall be classified as one of three types. The three types of applications are:
1. Small Cell Minor – An application that:
    - a. Involves removal or replacement of small cell facilities and any associated equipment on an existing wireless support; and such removal or replacement does not constitute a substantial change; or
    - b. Involves the routine maintenance of a small cell facility.
  2. Small Cell Substantial – An application that:
    - a. Involves the installation of a new small cell facility on a wireless support structure; or
    - b. Involves the removal or replacement of a small cell facility on an existing wireless support structure and such removal or replacement constitutes a substantial change.
  3. Wireless Support Structure – An application for a proposal to construct, modify or replace a wireless support structure in the Right of Way.
- B. Applications seeking to collocate a small cell facility to a wireless support structure owned by the City and located within the City Right of Way shall also be required to obtain an Attachment Certificate and shall be subject to an attachment.
- C. Pursuant to r. C. 4939.0312 (A) the City shall permit a person seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure within the jurisdiction of a single municipal corporation to file, at the person's discretion, a consolidated application for consent for up to thirty small cell facilities requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures. However, this single application may only address multiple small cell facilities or multiple wireless support structures if they each involve substantially the same type of small cell facilities or substantially the same type of wireless support structures. The City may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied. In the case of a consolidated application, the applicable fees shall be cumulative. In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline.

### **Decisions**

- A. The Service Director shall review the Certificate of Registration for Small Cell application for conformance with the standards of this Chapter and shall either:
1. Approve, approve with conditions, or deny a Small Cell Minor application;
  2. Grant or deny consent for Small Cell Substantial and Wireless Structure applications.
- B. If a request is denied, the reasons for denial shall be provided in writing to the applicant.
- C. The City reserves the right to deny an application if any one of the following conditions exist:
1. The application does not comply with a provision of this Chapter or a provision of the City's codified ordinances. The applicant is not authorized to conduct business in the State of Ohio;
  2. The applicant is not authorized to business in the State of Ohio;
  3. The applicant is not current in its obligation to pay to the City fees or taxes;
  4. The design or location is deemed unsafe or non-compliant in regards to transportation and engineering standards for construction within the Right of Way;
  5. The design is counter to the health, safety, and welfare of the City;
  6. The design or location is in conflict with current or proposed accessibility standards;

7. The design does not meet standards related to electrical, structural, safety, or construction best practices.
8. The proposed design is in conflict with existing infrastructure, facilities, and/or utilities.
- D. Except as allowed in subsection (E) below, applications shall be reviewed and a decision rendered within the following time periods:
  1. Small Cell Minor – Small Cell Minor applications shall be rendered within 60 days of the date of filing.
  2. Small Cell Substantial – Small Cell Substantial applications shall be rendered within 90 days of the date of filing.
  3. Wireless Support Structure – Wireless Support Structure applications shall be rendered within 120 days of the date of filing.
- E. The time period required in subsection (D) above may be tolled only:
  1. By mutual agreement between the applicant and the City;
  2. If the application is determined to be incomplete; or
  3. The number of applications exceeds the City's capacity to process them in a timely manner. If such number of applications exceeds capacity then the following tolling time periods may be instituted:
    - a. The time period may initially be tolled for up to 21 days when the number of applications received within any consecutive 30 day period exceeds 15 applications;
    - b. For every additional 15 applications that the City receives above the 15 applications stated in (a) the time period may be tolled an additional 15 days; and
    - c. However, in no instance shall the time tolled exceed 90 consecutive days.
- F. To toll the time period for incompleteness the City shall provide the applicant notice within 30 days of the date of filing. Such notice shall include a listing of the missing documents and/or information. The time period resumes once the applicant submits a response. If an application is still incomplete, the city shall notify the applicant within 10 days of the response.
- G. If multiple applications are received by the City to install two or more wireless support structures that would violate the spacing requirements of 1032.052 (B)2 – Design & Siting Requirements, or to collocate two or more small cell facilities on the same wireless support structure, the City shall process and render a decision in the order they are received.
- H. In the event that an application is received by the City to install a wireless support structure or small cell facility in a location in common with another application for a facility in the ROW, preference shall be granted in the following order of service provided:
  1. Municipal Infrastructure
  2. Water
  3. Electricity
  4. Gas
  5. Landline Telephone
  6. Wireless Service

#### **Amendments**

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

#### **Issuance of Permit and Attachment Certificates**

- A. When a Certificate of Registration for Small Cell application is approved or granted consent, and applicable permit fee is paid, a permit shall be issued to the applicant authorizing the following:
  1. Small Cell Minor Work Permit – a permit to perform the approved action, removal, replacement, or maintenance work, subject to any conditions;
  2. Small Cell Substantial Work Permit – a permit to perform the approved removal, replacement, or installation, and grant occupancy within the City Right of Way, subject to any permits or conditions;
  3. Wireless Support Structure Permit – a permit to construct, modify or replace a wireless support structure in the Right of Way, subject to any permits or conditions.
- B. When an application seeking collocation of a small cell facility to a wireless support structure owned by the City and located within the City Right of Way is approved and applicable fee paid, an Attachment Certificate authorizing such attachment, subject to any conditions shall be issued.

#### **Scope of Approval**

- A. No permit or certificate authorized by this Chapter shall be transferrable.

- B. No permit or certificate authorized by this Chapter shall convey title, equitable or legal, in the Right of Way.

**Duration of Approval**

- A. The work authorized by the permit issued must be completed within 180 days from the date of issuance, unless otherwise conditioned as part of the approval.
- B. An Attachment Certificate is valid for 10 years from the date of issuance and may be renewed by the applicant in successive 5 year terms. Any request for renewal is subject to approval by the Service Director and may be denied for cause.
- C. In the event that any court of competent jurisdiction invalidates any portion of federal law which mandates approval of any permit, such permit shall automatically expire 1 year from the date of the judicial order.
- D. In the event that any court of competent jurisdiction invalidates any portion of state law which mandates approval of any permit shall automatically expire 60 days from the date of the judicial order.

**Revocation**

The following are grounds for revocation or denial of approval:

- A. The intentional provision of materially misleading information by the applicant (the provision of information is considered “intentional” where the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence);
- B. The failure to comply with any condition of approval, order, or other applicable law, rule, or regulation;
- C. The site, structure or operation is otherwise not in compliance with any other provision(s) of applicable law;
- D. The subject site or use is otherwise not in compliance due to incomplete work or projects, or is not in compliance due to unperformed or slow to perform work as part of an open permit.

**Appeals**

City Council shall hear and decide upon appeals where it is alleged there is an error in any written decision made by the Service Director in the enforcement of this Code.

- A. A complete written appeal shall be filed by the appellant within 10 days of the written decision of the Service Director or the appeal shall become void. The appeal shall be filed with the Clerk of Council. The written appeal shall:
  - a. Cite specific provisions of this Chapter that are alleged to have been interpreted in error or the specific action being appealed and the grounds on which the appeal is being made;
  - b. Include any required application fee in an amount set by the City’s Fee Schedule.
  - c. Include such other information as may be required to render a reasonable decision
  - d. A statement as to why the appellant has standing as an aggrieved party to pursue the appeal.
- B. The City Council shall not be required to hear any case that has been the subject of an appeal during the previous 12 months, unless substantial new evidence, critical to the case, becomes available.

**STANDARDS**

**General**

The City desires to promote orderly small cell facility and wireless support structure installations using the smallest and least intrusive means available to provide services to the community. All such installations in the public right of way shall comply with all applicable provisions in this Section. All applications shall be subject to the following conditions:

- A. Compliance with all Applicable Laws – Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.
- B. Right to Inspect – the City or its designee may inspect a small cell facility or wireless support structure within the Right of Way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the small cell facility or wireless support structure in emergencies or



- when the small cell facility or wireless support structure threatens imminent harm to persons or property.
- C. Contact information – permittee shall at all times maintain accurate contact information for all parties reasonable for the small cell facility or wireless support structure, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Service Director.
- D. Indemnities – the permittee and, if applicable, the non-government owner of a small cell facility or wireless support structure shall defend, indemnify, and hold harmless the City and its agents, officers, officials, and employees from:
1. Any and all damages, liabilities, injuries, losses, costs, and expenses arising out of any claims, demands, lawsuit, writ of mandamus, or other actions or proceedings brought against the City to challenge, attack, seek to modify, set aside, void, or annul the City’s approval of the applicable permit or certificate; and
  2. Any and all damages, liabilities, injuries, losses, costs and expenses and any claims, demands, lawsuits, or other actions or proceedings of any kind, whether for personal injury, death, or property damage, arising out of or in connection with the activities or performance of the permittee or its agents, employees, licensees, contractors, subcontractors, or independent contractors.
  3. In the event the City becomes aware of any such actions or claims, the City shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City’s defense, and the permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
- E. Interference with City Communication Services – in the event that the City has reason to believe that permittee’s operations are causing interference with the City’s radio communications operations, then the permittee shall, at its cost, immediately cooperate with the City to either rule out permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the equipment on and off for testing.
- F. Adverse Impact – Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility or wireless support structure.
- G. Maintenance – the site and the small cell facility or wireless support structure, including but not limited to all landscaping, fencing, and related equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- H. Good Condition – Small cell facilities and wireless support structures shall at all times employ best practices and maintain in use only the best available technology and methods for preventing failures and accidents so that the same shall not menace or endanger the life or property of any person.
- I. Graffiti and Vandalism – Permittee shall remove any graffiti at permittee’s sole expense.
- J. Utility Lines – service lines must be undergrounded in all subdivisions consistent with Cortland Codified Ordinances and in all other places service lines shall be undergrounded whenever feasible to avoid additional overhead lines.
- K. Relocation for Public Improvements – Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee’s sole expense to accommodate construction of a public improvement project by the City.
- L. Removal if Discontinued – in the event that the use of a small cell facility is discontinued, the owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued. Thereafter the City may treat the discontinued facility in the same manner as the treatment of other discontinued equipment in the Right of Way as set forth in Cortland’s Codified Ordinances.
- M. Abandoned – in the event that the use of a small cell facility is abandoned, the City may remove it at the owner’s expense.
- N. Site Restoration
1. Upon completion of the new work, the contractor shall restore the street and/or alley pavement as required;
  2. Upon completion of the new work, the contractor shall restore all concrete walks, driveway aprons, and other concrete as required;
  3. Upon completion of the new work, the contractor shall restore all tree lawns and/or sod strips with topsoil and sod.

- O. General Construction – All work and designs shall comply with the general standards for construction in the City’s Right of Way as required by all right of way workers and all other applicable local, state and federal codes and regulations.
- P. Taxes and assessments – To the extent taxes and other assessments are imposed by taxing authorities on the use of City property as a result of an applicant’s use or occupation of the right of way, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.
- Q. Interference – small cell wireless and wireless support structures shall be constructed and maintained in such a manner that will not interfere with the use of other property.
- R. Financial Condition – all owners must procure and provide to the City a bond, more must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this chapter. Such bond or financial mechanism must specifically cover the cost of removal of the item placed in the Right of Way.
- S. Setbacks for Visibility and Access – any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure must be setback from intersections, alleys and driveways and placed in locations where it will not obstruct motorists’ sightlines or pedestrian access.
- T. Obstructions – any new small cell facility or wireless support structure and other improvements associated with a new small cell facility or wireless support structure or an existing small cell facility or wireless support structure shall not obstruct any:
  - 1. Worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;
  - 2. Access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop (including, without limitation, bus stops, streetcar stops and bike share stations);
  - 3. Worker access to above ground or underground infrastructure owned or operated by any public or private utility agency;
  - 4. Fire hydrant access;
  - 5. Access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the right of way; or
  - 6. Access to any fire escape.
- U. Historic or Architecturally Significant Structures – any new utility installation and other improvements associated with a new utility installation or an existing utility installation may not be placed directly in front of any Historic Properties or other historic or architecturally significant structures in prominent or highly visible locations.
- V. Landscape Restoration – all trees, landscaping and grounds removed, damaged or disturbed as a result of the siting, construction, placement, collocation, modification, operation, and removal of small cell facilities and/or wireless support structures must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

### **Design and Siting Requirements**

- A. General Requirements
  - 1. Wireless support structures shall align with other poles to achieve a uniform inline appearance.
  - 2. Wireless support structures shall be setback from the edge of pavement according to applicable safety and construction standards as set forth in 1032.05.1.O – General.
  - 3. All small cell facilities and wireless support structures and any related items shall be installed and maintained plumb and level and shall maintain an orderly and neat appearance.
  - 4. All equipment and enclosures shall be attached, anchored and/or strapped tightly to poles using corrosion resistant steel hardware.
  - 5. Wireless support structures shall support no more than two small cell facilities.
  - 6. Ambient noise suppression measures or placement of the equipment in locations less likely to impact adjacent properties shall be required to ensure compliance with all applicable noise regulations.
  - 7. Unless otherwise required for compliance with FAA or FCC regulations, the small cell facility or wireless support structure shall not include any permanently installed lights. Any lights associated with the equipment shall be appropriately

shielded from public view. This shall not be interpreted to prohibit streetlights or the placement of luminaires by the City.

#### B. Location

1. In accordance with ORC 4939.0314(D), Authority of a Municipal Corporation, the City shall reserve the right to propose an alternate location to the proposed location of a new wireless support structure, provided the alternate location is within 100' or a distance equal to the width of the Right of Way in or on which the new wireless support structure is proposed, whichever is greater. The City also finds that certain locations and collocation configurations are preferred. A preferred location and collocation configuration should be utilized whenever possible and should only be surpassed if in the determination of the Service Director, clear and convincing evidence support such a decision. Cost alone should not be grounds for such a determination. The order of preference is as follows:
  - a. First, small cell facilities should be collocated on an existing pole or wireless support structure within a utility easement. If no such pole or wireless support structure is available then proceed to the next preference;
  - b. Second, small cell facilities should be collocated on an existing pole or wireless support structure within an alley. If no such pole or wireless support structure is available then proceed to the next preference;
  - c. Third, small cell facilities should be collocated on a new wireless support structure within a utility easement. If no such location is available then proceed to the next preference;
  - d. Fourth, small cell facilities should be collocated on a new wireless support structure within an alley. If no such location is available then proceed to the next preference;
  - e. Fifth, small cell facilities should be collocated on a wireless support structure currently supporting a small cell facility located within the City Right of Way. If no such wireless support structure is available then proceed to the next preference;
  - f. Sixth, small cell facilities should be collocated on an existing pole located within the City Right of Way. If no such existing pole is available then proceed to the next preference;
  - g. Seventh, small cell facilities should be collocated on a new wireless support structure located within a utility easement. If no such location is available then proceed to the next preference;
  - h. Eighth, small cell facilities should be collocated on a new wireless support structure located within an alley. If no such location is available then proceed to the next preference;
  - i. Ninth, small cell facilities should be collocated on a new wireless support structure located within the City Right of Way.
2. New wireless support structures shall be spaced from other small cell facilities consistent with the average spacing of the existing utility poles and street light poles along that portion of the right of way and if none, no closer than 500 feet unless such spacing requirement shall prohibit, or have the effect of prohibiting, the provision of wireless service to any location.

#### C. Wireless Facilities Design

1. Wireless support structures shall be subject to the following design standards:
  - a. Wireless support structures shall be limited to 40 feet in height.
  - b. Wireless support structures shall be capable of supporting at least two small cell facility operators.
  - c. New wireless support structures shall have design elements matching the aesthetics and character of the immediate area as determined by the Service Director. Such a determination shall be based on the following factors:
    - (i) The design features of nearby poles serving in a similar capacity;
    - (ii) The design features of the existing or proposed streetscape, district, or site;
    - (iii) The historical context of a district, Historic Property or specific site.
2. Small cell facilities and micro wireless facilities shall be subject to the following design standards:

- a. The City reserves the right to require the following:
  - (i) Antenna and all associated equipment shall be concealed to the extent deemed necessary by the Service Director in response to the aesthetic context of the small cell facility. Some possible configurations include but shall not be limited to the following:
    - I. Antenna(s) associated with the first fitting on a wireless support structure shall be top-mounted and concealed within a radome that also conceals the cable connections, antenna mount and other hardware. The Service Director may approve a side-mounted antenna with the initial fitting if, in the Service Director's discretion, the side-mounted antenna would be a better match to the aesthetics and character of the immediate area and would promote the purposes of this Chapter.
    - II. GPS antennas be placed within the radome or directly above the radome not to exceed six inches.
- b. Each antenna and all associated equipment shall not exceed 6 cubic feet in volume.
- c. All portions of a Small Cell Facility other than an antenna and as identified by the ORC 4939.01 (P) 2, shall not exceed 28 cubic feet in volume per facility.
- d. Small cell facilities mounted to a wireless support structure shall be completely concealed within a common enclosure capable of containing at least two small cell facilities. Such common enclosures shall:
  - (i) Not exceed 21 cubic feet in volume;
  - (ii) Not exceed 90 inches in height, 20 inches in width, or 20 inches in depth;
  - (iii) Not extend more than 24 inches away from the pole on which it is mounted;
  - (iv) Shall be centered on the vertical axis of the pole to which it is mounted;
  - (v) Be mounted at a distance of at least 10 feet measured from grade to the bottom of the enclosure;
  - (vi) Be mounted on the side of the pole facing away from nearest traffic lane's discretion of travel.
- e. Such common enclosures shall have the following design elements:
  - (i) Material – the enclosure material shall be metal, a composite, or an equivalent material as determined by the Service Director.
  - (ii) Color – the enclosure shall match the color of the pole on which it is mounted.
  - (iii) Style – the enclosure shall match the style of the pole on which it is mounted.
  - (iv) Coordinated Design Elements – common enclosures shall match the material, color, and style of nearby existing common enclosures when:
    - I. Such enclosures are located within 5000' of an existing common enclosure; and
    - II. Such enclosures are mounted on wireless support structures of a similar or matching design.
  - (v) Exception – if the aesthetics and character of the immediate area would be better matched by an enclosure a different material, color, style, or by deviating from the design of a nearby existing common enclosure as determined by the Service Director, then such design elements may be substituted with an alternate design element. Such determination shall be based on the following factors:
    - I. The design features of nearby poles serving in a similar capacity;
    - II. The design features of the existing or proposed streetscape, district, or site;
    - III. The historical context of a district, Historic Property, or specific site;
    - IV. A desire to camouflage or conceal the enclosure from view.
- f. All ground mounted equipment shall be placed in an underground vault in areas that are designated solely for underground utilities for all structures and

facilities in the right of way. A waiver of this provision may be granted by the Service Director if the following applies:

- (i) The applicant has submitted clear and convincing evidence that the equipment cannot feasibly be pole-mounted or placed in a location in the public right of way where the above ground prohibition does not apply, placed in an underground vault, or hidden within or integrated into an existing streetscape element (i.e. – bus stop shelter). Increased costs alone shall not be a consideration. If a ground mounted enclosure is approved, the Service Director shall reserve the right to require any of the following conditions:
  - I. Concealed Enclosure – all equipment shall be completely concealed within a metal, composite, or equivalent material enclosure as determined by the Service Director.
  - II. Smallest Size – the enclosure shall be no larger than necessary based on the smallest available size of the proposed equipment as determined by the Service Director.
  - III. Camouflage – camouflaging elements may be required. Such elements may include, but shall not be limited to, public art displayed on the enclosure, strategic placement in less visible or obtrusive locations, placement within an existing streetscape element, landscape screening, and strategic painting or coating to camouflage such enclosure or equipment.
- (ii) The maximum height of any such enclosure shall be 30’.

#### **Reservation of Right of Way**

The City reserves the right to reserve space for future public safety or transportation uses in the Right of Way or on a wireless support structure or pole owned or operated by the City in a documented and approved plan in place at the time an application is filed. A reservation of space shall not preclude placement of a pole or collocation of a small cell facility. If replacement of the City’s pole or wireless support structure is necessary to accommodate the collocation of the small cell facility and the future use, the small cell facility operator shall pay for the replacement of the pole or wireless support structure, and the replaced pole or wireless support structure must accommodate the future use.

The Service Director is authorized to make requests and to issue orders regarding utility installations in the right of way for the purpose of public safety and compliance with this Chapter. The Service Director is also authorized to conduct visual and external inspections of utility installations in the right of way at any time and shall make efforts to coordinate with the provider responsible for a utility installation for any internal inspection of the relevant equipment.

#### **Nonconformity**

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

- A. The nonconforming small cell facility and/or wireless support structure or a part of the nonconforming small cell facility and/or wireless support structure is altered, modified, relocated, replaced, or changed in any manner whatsoever;
- B. The nonconforming small cell facility and/or wireless support structure is damaged or deteriorated and requires any process of reconstruction, repair, maintenance, or restoration, and the cost of said reconstruction, repair, maintenance, or restoration exceeds fifty percent of the small cell facility and/or wireless support structure’s replacement cost;
- C. The nonconforming small cell facility and/or wireless support structure is abandoned.

#### **Conflict with other Provisions**

In the event that any other applicable law or code requires any more restrictive requirements, the most restrictive requirement shall control.

#### **Severability**

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

**Penalties**

- A. Any person in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a misdemeanor of the second degree each day during the period such violation continues. Each and every failure to comply shall be considered a distinct and separate offense.
- B. If any utility installation is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the City, in addition to other remedies, may institute in the name of the City any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such utility installation, and/or to prevent any illegal act, conduct business, or use in or about such utility installation.

**Section 2.** Application for Certificate of Registration for Small Cell to be a one time fee of two hundred fifty dollars (\$250.00) per micro wireless small cell facility. This fee shall adjust ten percent every five years, rounded to the nearest five dollars.

Certificate of Attachment shall be two hundred dollars (\$200.00) per small cell facility collocated on a wireless support structure owned or operated by the City and located in the right of way.

**Section 3.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in this formal action were taken in meeting open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**Section 4.** This Ordinance having the procedural rules suspended shall take effect immediately as being of paramount concern to enact the health, welfare, and safety of the residents of the City of Cortland.

**PASSED IN COUNCIL THIS 16<sup>th</sup> DAY OF JULY, 2018.**

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
PRESIDENT OF COUNCIL

FILED W/ MAYOR \_\_\_\_\_  
DATE

\_\_\_\_\_  
MAYOR

DATE APPROVED \_\_\_\_\_

**ROLL CALL**  
**EMERGENCY**  
 Edwards, aye  
 Fleischer, aye  
 Keller, aye  
 Moore, aye  
 Petrosky, aye  
 Piros, aye  
 Rowley, aye

**ORDINANCE**  
 Edwards, aye  
 Fleischer, aye  
 Keller, aye  
 Moore, aye  
 Petrosky, aye  
 Piros, aye  
 Rowley, aye

**OFFICIAL SEAL**