

**Ordinance Establishing Standards for Small Wireless Facilities in the
Rights-of-Way in the City of Winston-Salem**

Section I. Section 79 of the City Code of Winston-Salem is established as follows:

WHEREAS, the City of Winston-Salem (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, schools within the City; and

WHEREAS, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antennae systems, often may be deployed most effectively in the public rights-of-way; and,

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

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Winston-Salem, that the Municipal Code of the City of Winston-Salem shall be amended by adding the following Chapter 79 that will read as follows:

79 - Small Wireless Facilities

79-1 – Purpose and Scope

(a) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities in rights-of-way within the City’s jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual characteristics of the City rights-of-way and the City as a whole. This ordinance is not intended to prohibit or regulate small cell systems based on factors outside the City’s authority, as established by State or Federal Law.

(b) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:

(1) prevent interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain City corridors, and other public ways and places;

- (2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or on public property;
 - (4) protect against environmental damage, including damage to trees;
 - (5) preserve the character of the neighborhoods in which facilities are installed; and
 - (6) facilitate rapid deployment of small cell facilities to provide the benefits of advanced Wireless Services.
- (c) Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

79-2 - Definitions

- (a) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.
- (b) "Applicable Codes" means any uniform code such as building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to Persons, to the extent consistent with the terms of this Chapter.
- (c) "Applicant" means any Person who submits an application and is a Wireless Provider.
- (d) "Application" means a request submitted by an Applicant (i) for a Permit to collocate small wireless facilities or (ii) to approve the installation or modification of a Utility Pole, City Utility Pole, or Wireless Support Structure.
- (e) "City" refers to the City of Winston-Salem.
- (f) "City-Owned Pole" means (i) a Utility Pole owned or operated by the City in City right-of-way, including a Utility Pole that provides lighting or traffic control functions, such as light poles and traffic signals and (ii) a pole or similar structure owned or operated by the City in City right-of-way that supports only Wireless Facilities.
- (g) "City Code" means the City of Winston-Salem Municipal Code.

(h) "Collocate" means to install, mount, maintain (other than routine maintenance), modify, operate, repair, or replace Wireless Facilities on or adjacent to a Wireless Support Structure, City-Owned Pole, or Utility Pole. "Collocation" has a corresponding meaning.

(i) "Day" means calendar day.

(j) "Emergency" is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public or (2) has caused or is likely to impair the use of facilities in the right-of-way and/or result in loss or impairment of the services provided.

(k) "Facility(ies)" means wireless telecommunication facilities.

(l) "FCC" means the Federal Communications Commission of the United States.

(m) "Fee" means a one-time charge.

(n) "Law" means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(o) "Modification" means a change to an existing wireless facility that involves any of the following: expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. "Modification" does not include repair, replacement or routine maintenance, if those actions do not involve a change to the existing facility involving any of the following: expansion, alteration, enlargement, intensification, reduction, or augmentation.

(p) "Monopole" means a structure composed of a pole or tower used to support Antennae or related equipment. A monopole also includes a monopine, monopalm, and similar structures, camouflaged to resemble faux trees or other faux objects.

(q) "Permit" means a written authorization required by the City to perform an action or initiate, continue, or complete a project.

(r) "Pole" means a single shaft of wood, steel, concrete, or other material capable of supporting the equipment mounted thereon in a safe and sufficient manner, as the City, in its sole and absolute discretion shall determine, and as required by provisions of the City Code, the UDO, and Applicable Codes.

(s) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, and includes the City.

(t) "Rate" means a recurring charge.

(u) "Rights-of-Way" or "ROW" means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but does not include federal interstate highways.

(v) "Small Wireless Facility" means a Wireless Facility that meet(s) both of the following qualifications: (i) each Antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the Wireless Facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, stealth or concealment elements, telecommunications demarcation boxes, ground-based enclosures/cabinets, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(w) "UDO" means the Forsyth County Unified Development Ordinance.

(x) "Utility Pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines, cables, or wires for telecommunication, cable, or electric service, or for lighting. Such term shall not include structures supporting only Wireless Facilities.

(y) "Wireless Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications and (ii) radio transceivers, Antennae, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the Wireless Support Structure or improvements on, under, or within which the equipment is collocated, to which the equipment is attached or within which the equipment is enclosed.

(z) "Wireless Infrastructure Provider" means any Person, including a Person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, or Wireless Support Structures, but that is not a Wireless Services Provider.

(aa) "Wireless Provider" means a Wireless Infrastructure Provider or a Wireless Services Provider.

(bb) "Wireless Services" means any services, whether at a fixed location or mobile, provided using Wireless Facilities.

(cc) "Wireless Services Provider" means a Person who provides Wireless Services.

(dd) “Wireless Support Structure” means a freestanding structure, such as a monopole or tower, either guyed or self-supporting, a billboard, or other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole or City-Owned Pole.

All terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

79- 3 – Permitted Use; Application and Fees

(a) Permitted Use: Collocation of a Small Wireless Facility or a new or modified Utility Pole or Wireless Support Structure for the collocation of a Small Wireless Facility, that meet the height requirements of § 160A-400.55(c)(2), shall be classified as permitted uses and subject only to administrative review under Section 79-4 if they are collocated (i) in a City right-of-way, within any zoning district or (ii) outside of City rights-of-way, on property zoned other than as single-family residential property.

(b) Permit Required. No Person shall place or collocate a Small Wireless Facility in the public rights-of-way, without first filing the appropriate Application and obtaining a Permit therefore, except as otherwise provided in this Chapter.

(c) Permit Application. Applications for Permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential”, by clearly marking each page of such materials accordingly.

(d) Application Requirements. Applications shall be made by the Wireless Provider or its duly authorized representative and shall contain the following:

(1) A sealed plan, prepared by a Professional Engineer, Architect, Landscape Architect or other Professional authorized to practice land development in North Carolina.

(2) The Applicant’s current name, address, telephone number, and e-mail address, as well as current contact information for responsible parties

(3) All Applications shall be submitted to the City’s Engineering Records Department, which shall be the sole source of communications to and from the City (other than when Council or its committees consider an Application).

(4) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application.

(5) A general description of the proposed work and the purposes and intent of the Small Wireless Facility, provided that, per N.C.G.S. § 160A-400.54 (d)(2), a Wireless Provider shall not be required to provide more information to obtain a Permit than communications service providers that are not Wireless Providers and provided, furthermore, that, pursuant to § 160A-400.52 (c), with respect to an Application for the placement or construction of a new Wireless Support Structure or the substantial modification of an existing Wireless Support Structure, a Wireless Provider shall not be required to provide information pertaining to the Wireless Provider's designed service, customer demand for its service, the specific need for the Wireless Support Structure, including whether the Wireless Support Structure is intended to add additional wireless coverage or capacity, the quality of the Wireless Provider's service to or from a particular site or area, or any proprietary, confidential, or other business information to justify the need for the Wireless Support Structure, including propagation maps and telecommunications traffic studies. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

(6) A site plan, with sufficient detail to show the proposed location of items the Applicant seeks to install, modify, or collocate in the right-of-way, including any manholes or poles and the size, type, and depth of any conduit, enclosure, or other equipment.

(7) Provide certification that the Wireless Facilities, Wireless Support Structures, any new or modified Utility Poles and City-Owned Poles, and all other system components will not interfere with any existing public or private utilities, public safety, and other systems.

(8) Provide certification that the Small Wireless Facility, Wireless Support Structure, and new or modified Utility Pole or City-Owned Pole shall comply with the City Code, the UDO, and all Applicable Codes, approved plans, and prior and existing conditions of approval.

(9) A Wireless Provider shall demonstrate and certify that they have or will have access to power at the site of the proposed Wireless Facility, Wireless Support Structure, or new or modified Utility Pole or City-Owned Pole within thirty (30) calendar days of the Permit's issuance, and that power will be maintained to the site until the Wireless Facility is activated.

(10) An Application must include an attestation that Small Wireless Facilities will be collocated on the Utility Pole, City-Owned Pole, or Wireless Support Structure within six (6) months of approval, and that the Small Wireless Facilities will be activated for use by a Wireless Services Provider, in order to provide service, no later than one year from the Permit issuance date, unless the City and the Wireless Provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(11) An Applicant seeking to collocate Small Wireless Facilities at multiple locations within the City's jurisdiction shall be allowed, at the Applicant's discretion, to file a consolidated application for no more than twenty-five (25) separate facilities and receive a single Permit for the collocation of all the Small Wireless Facilities meeting the requirements of the ordinance, Applicable Codes, the City Code, the UDO, and all other applicable federal and state laws and regulations. The City may remove Small Wireless Facility collocations from a consolidated application and treat separately those for which incomplete information has been provided or which the City will deny. The City may issue a separate Permit for each collocation the City approves.

(12) The Applicant asserts, to the best of the Applicant's knowledge, and under penalty of perjury, the truth of the information contained in the Application.

(13) Photo depictions of the proposed installation, modification, or collocation from the four (4) cardinal directions.

(14) Copies of any previously issued Permits for the Small Wireless Facilities, Wireless Support Structures, Utility Poles, City-Owned Poles, or other components of the system.

(e) Permit Conditions. A Permit for the collocation of the Small Wireless Facility shall provide that the collocation must commence (begin field construction) within six (6) months of approval and that the Small Wireless Facility shall be activated no later than one (1) year from the Permit issuance date, unless the City and the Wireless Provider agree to extend this period or a delay is caused by a lack of commercial power at the site. In addition, the Applicant shall be required to obtain all otherwise applicable work Permits including, by way of example and not by way of limitation, Permits for work that will involve excavation in the right-of-way, affect traffic patterns or obstruct vehicular traffic in the right-of-way. All Permits shall be conditioned on: (i) the Applicant's continuous compliance with the City Code, the UDO, and all Applicable Codes, approved plans, and prior and existing conditions of approval and (ii) the City's right to inspect and monitor the Small Wireless Facility, Wireless Support Structure, Utility Pole, and/or City-Owned Pole for compliance.

(f) Applicant. Applicant shall maintain compliance with the City Code, the UDO, all Applicable Codes, all approved plans, all prior and existing conditions of approval, and all other applicable laws, regulations, rules, and codes. The City shall have the right, but not the obligation, to inspect and monitor all Small Wireless Facilities, Wireless Support Structures, Utility Poles, and City-Owned Poles for compliance.

(g) Routine Maintenance and Replacement. An Application shall not be required for: (i) routine maintenance or (ii) the replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height, and that does not defeat or alter any concealment, stealth, or camouflage elements present on the Small Wireless Facility.

(h) Information Updates. Any amendment to information contained in an Application shall be submitted, in writing, to the City within thirty (30) days after the change necessitating the amendment.

If the information is submitted before the Application has been approved, the City shall have another thirty (30) days from the date on which the new information was submitted to review the revised Application.

(i) Fees. The fee for submitting an application shall be one hundred dollars (\$100.00) per Small Wireless Facility for the first five Small Wireless Facilities addressed in an Application, plus fifty dollars (\$50.00) for each additional Small Wireless Facility addressed in the Application.

79-4 - Administrative Review and Approval Process

This Section applies to applications for Permits that meet the requirements specified in Subsection 3(A).

(a) Review for completeness. An Application subject to this Administrative Review section shall be deemed complete, unless the City provides notice, in writing, to the Applicant within thirty (30) days of submission or within some other mutually agreed-upon timeframe. The notice shall identify the deficiencies in the Application which, if cured, would make the application complete. The Application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(b) Applications. Applicants who/which intend to submit application with more than ten (10) proposed location sites shall be required to schedule and attend a pre-application conference with staff from the City's Engineering Records Department to discuss the application prior to its submission.

(c) Time Limits for Review of Completed Applications. An Application for a collocation, which is neither an eligible facilities request, per subsection 79-4 (e), below, nor the installation of a new Wireless Support Structure, Utility Pole, or City-Owned Pole, and is subject to this Administrative Review section shall be processed on a non-discriminatory basis and shall be deemed approved if the City fails to approve or deny the Application within forty-five (45) days from the time the Application is deemed complete or, alternatively, within some other mutually agreed-upon timeframe, to which the City and the Applicant agree.

(d) Denial of Permit. The City may deny an Application for a Permit, subject to this Administrative Review section, on the basis that it does not meet: 1) the Applicable Codes, the City Code, or the UDO, 2) local code provisions or regulations that concern public safety, objective design standards for decorative Utility Poles, Utility Poles, generally, or reasonable and non-discriminatory stealth and concealment requirements, including screening and landscaping for ground-mounted equipment (ground cabinets, etc.), 3) public safety and reasonable spacing requirements for poles and ground-mounted equipment in the right-of-way, or 4) local, state, and federal historic district laws and regulations in and/or enacted pursuant to or consistent with Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes, 47 U.S.C. 332(c)(7), 47 U.S.C. 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. 300101 et seq. The City shall (i) document the basis for a denial, including the specific code provisions on which the denial was based, and (ii) send the documentation to the Applicant on or before the day the City denies an Application. 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, deny, or identify any continuing deficiencies in, the revised Application within thirty (30) days of the date on which the Application was re-submitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial. If the cited deficiencies are not cured within one-hundred-twenty (120) calendar days of the date of the City's written notice to the Applicant, thereof, the Application shall automatically be deemed withdrawn on the one-hundred-twentieth (120th) calendar day.

(e) Review of Eligible Facilities Requests. Notwithstanding any other provision of this Chapter, the City shall approve and may not deny qualifying applications for eligible facilities requests, which meet the requirements of federal and state law, within sixty (60) days from the date of the Application's submission or forty-five (45) days from the date the Application is deemed complete, whichever comes first, or, alternatively, within some other mutually-agreed time frame, to which the City and the Applicant agree. The City shall process and review all qualifying eligible facilities requests according to the requirements and procedures established in 47 CFR 1.40001(c) and N.C.G.S. § 160A-400.53.

79-5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

(a) Maximum Size of Permitted Use. A Wireless Provider may collocate Small Wireless Facilities along, across, upon, and under any City right-of-way, subject to the requirements of this ordinance and applicable federal and state laws, rules, and regulations. Subject to this ordinance and applicable federal and state laws, rules, and regulations, a Wireless Provider may also place, maintain, modify, operate and replace associated Utility Poles, City-Owned Poles, conduit, cable, and related appurtenances and facilities along, across, upon, and under any City right-of-way. The placement, maintenance, modification, operation and replacement of Utility Poles and City-Owned Poles associated with the collocation of Small Wireless Facilities, along, across, upon, and under any City right-of-way shall be classified as Permitted uses and subject only to administrative review or approval under subsection 79-4 if the Wireless Provider meets the following requirements:

(1) Each new Utility Pole and each modified or replacement Utility Pole or City-Owned Pole installed in the right-of-way shall not exceed fifty (50) feet above ground level.

(2) Each new Small Wireless Facility in the right-of-way shall not extend more than ten (10) feet above the Utility Pole, City-Owned Pole or Wireless Support Structure on which it is collocated.

(3) Nothing in this section shall be construed to prohibit the City from allowing Utility Poles, City-Owned Poles, or Wireless Facilities that exceed the limits set forth herein.

(4) Relay towers and other towers taller than fifty (50) feet shall be considered transmission towers for purposes of this ordinance and, regardless of whether the towers are located within the public right-of-way or no, all relay and other towers taller than fifty (50) feet shall be treated under the tall cell sections of the UDO.

(b) Other Requirements. Any Wireless Provider that seeks to construct or modify a Utility Pole, Wireless Support Structure, or Wireless Facility shall be subject to the following requirements:

(1) Collocations of Small Wireless Facilities are preferred on existing poles, where feasible.

(2) Installations of Small Wireless Facilities are preferred at property lines and street corners where feasible.

(3) Wireless Facilities shall be located such that they do not interfere with public health or safety facilities, equipment, or operations, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility or equipment. New Wireless Facilities shall not be installed directly over any water, sewer, refuse, drainage, gas, steam, power, or electrical main, service line, or other infrastructure, without the City's and the line owner's express, prior, written consent.

(4) New, modified/alterd, and replacement Wireless Support Structures, erected, modified/alterd, or replaced for the installation or collocation of Small Wireless Facilities shall be made of the same type of material as existing poles in the immediate area. Applicant may request a variance of this provision from the City.

(5) Any tree-disturbing activity necessary for the installation or collocation of Small Wireless Facilities shall comply with the City's tree ordinance.

(6) Wireless Support Structures shall not be lighted or marked by artificial means, except when mounted on an existing light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local laws, rules, or regulations. Notwithstanding the preceding sentence, the mounting of Small Wireless Facilities on light poles is Permitted, subject to the requirements of this ordinance, Applicable Codes, the City Code, and the UDO.

(7) A Wireless Provider shall repair, at its sole cost and expense, any damage, including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to state, City, public, and private streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, above- and below-ground utility lines and systems (including, but not limited to, water, sewer, drainage, gas, and power/electricity), and all other public and private improvements of any kind or nature, that result from any activities performed in connection with the occupation, installation, collocation, maintenance, inspection, repair, or replacement of a Wireless Facility, Wireless Support Structure, City-Owned Pole, or Utility Pole in the public right-of-way. The Wireless Provider shall restore such areas, structures, and systems to the same functional equivalence that existed prior to the activity that necessitated the repairs. The Wireless Provider shall maintain all Wireless Facilities, Wireless Support Structures, and other facilities and system elements in a neat and clean manner.

(8) Small Wireless Facilities shall not be permitted in historic districts and will only be allowed in historic overlay districts when they comply with the FCC's Nationwide Programmatic Agreement for the Collocation of Wireless Antennae Executed by the FCC, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation.

(9) All Small Wireless Facilities, Wireless Support Structures, new or replacement Utility Poles and City-Owned Poles, and their associated Wireless Facilities shall be camouflaged, disguised, hidden, and blended in with the surrounding environment to the maximum extent practicable.

(10) No Wireless Facility may bear any signs or advertising devices other than certifications, warnings, or other information, as required by federal or state law and/or regulation or by the City Code or UDO.

(11) New Wireless Facilities on existing poles shall comply with otherwise applicable rules imposed by the pole owner and City including, when applicable, the National Electric Safety Code.

(c) Undergrounding Provisions. ApplicantApplicants for use of a City right-of-way shall comply with the City's undergrounding requirements, prohibiting the installation of above-ground structures in the City rights-of-way, without prior zoning approval, provided the City's requirements (i) are non-discriminatory with respect to the type of utility, (ii) do not prohibit the replacement of structures existing at the time of the requirements' adoption, and (iii) allow for a waiver process. Applicants may seek a special use permit to place above-ground structures in areas where the undergrounding requirements apply.

Notwithstanding anything to the contrary herein, in no instance shall a utility pole, City-Owned Pole, or Wireless Support Structure exceed forty (40) feet above ground level in any area zoned single-family residential, where the existing utilities are installed underground, unless the City grants a waiver or variance approving a taller Utility Pole, City-Owned Pole, or Wireless Support Structure.

79-6 - Effect of Permit

(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, and subject to,

this Chapter and any other party's pre-existing rights in the right-of-way. A Permit from the City does not create a property right or grant authority to the Applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) Duration. Construction of a collocation of a Small Wireless Facility shall commence within six (6) months of approval and shall be activated for use (operational) no later than one (1) year from the Permit issuance date, unless the City and the Applicant agree to extend this period or a delay is caused by a lack of commercial power at the site. If construction of the collocation is not commenced within six (6) months of approval, the Permit will automatically expire six (6) months following approval. If the Small Wireless Facility is not

activated/placed into operation within one (1) year from the date of the Permit's issuance, the Permit will automatically expire one [1] year from the date of the Permit's issuance.

(c) Post Construction. The Applicant must submit as-built drawings in an acceptable GIS format, as determined by City staff, in its sole and absolute discretion, as soon as reasonably practicable, but no later than one-hundred-twenty (120) days after the completion of the installation or collocation and, in no event, later than fifteen (15) months following the date of the Permit's issuance. The Applicant shall submit and maintain current contact information for the party responsible for the Wireless Facility, on a form to be supplied by the City.

79- 7 - Removal, Relocation or Modification of Small Wireless Facility in the ROW

(a) Notice. Within ninety (90) calendar days following written notice from the City, the Wireless Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any Small Wireless Facilities within the right-of-way, if the City has determined, in its sole and absolute discretion, that such protection, support, disconnection, removal, relocation, change, or alteration, is necessary for the construction, installation, operation, inspection, maintenance, repair, rehabilitation, expansion, relocation, or removal of any City improvement or the provision or continuation of the City's operations or services in, upon, over, or under the Citythe right-of-way.

(b) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to disconnect, cut, modify/alter, move, or remove any Small Wireless Facility, Wireless Support Structure, Utility Pole, or City-Owned Pole located within the rights-of-way of the City, as the City, in its sole and absolute discretion, determines is necessary, appropriate, or useful in response to any public health or safety need or emergency. If circumstances permit, as the City, in its sole and absolute discretion shall determine, the City shall notify the Wireless Provider and afford the Wireless Provider an opportunity to move its own facilities prior to disconnecting, cutting, modifying/altering, moving, or removing a facility. The City shall, in any event, notify the Wireless Provider after disconnecting, cutting, modifying/altering, moving, or removing a Small Wireless Facility if the City has not already notified the Wireless Provider.

(c) Abandonment of Facilities. The City may require a Wireless Services Provider to remove an abandoned Wireless Facility within one-hundred-eighty (180) days of abandonment. Should the Wireless Services Provider fail to timely remove the abandoned Wireless Facility, the City may cause such Wireless Facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the Wireless Services Provider. A Wireless Facility shall be deemed abandoned at the earlier of the date that the Wireless Services Provider indicates, in any way, that it is abandoning such facility or the date that is one-hundred-eighty (180) days after the date that such Wireless Facility ceases to transmit a signal, unless the Wireless Services Provider gives the City reasonable evidence that it is diligently working to place such Wireless Facility back in service.

(d) **Liability; Assumption of the Risk.** Applicant, by applying for and accepting a Permit, assumes all risk of liability for damages that may occur to Persons or property on account of the collocation, installation, occupation, presence, existence, operation, maintenance, modification, repair, replacement, relocation, or removal of the facilities covered by the Permit, or the proposed work, whether completed by the Applicant or the Applicant's agent or contractor. Applicant shall procure and maintain in continuous effect, for the duration of the encroachment, liability insurance to protect the City from liability and damages on account of injuries to workers, as provided by law, and to protect the City from liability and damages occasioned by the collocation, installation, presence, existence, occupation, operation, maintenance, modification, repair, replacement, relocation, or removal of the facilities covered by the Permit, or the proposed work, whether completed by the Applicant or the Applicant's agent or contractor, and from any liability or damages pertaining to the City's disconnection, cutting, modification/alteration, removal, or relocation of any Wireless Facilities, Wireless Support Structures, Utility Poles, or City-Owned Poles Applicant has installed or modified or on which Applicant has collocated. Applicant shall provide the City, together with the Application and, thereafter, within ten (10) calendar days of demand, original, signed certificates of insurance to show that the Applicant carries insurance in the required levels and coverages, as specified by the City's Risk Management Office. Applicant shall also provide the City certificates of insurance from any subcontractors the Applicant engages to perform work pursuant to the Permit. Both the Applicant's and its subcontractors' insurance certificates shall name the City an additional insured (in the Applicant's case, for the duration of the encroachment; in the Applicants' subcontractors' cases, for the duration of the work the subcontractors perform and for one (1) year thereafter).

(e) **Release, Indemnification, and Covenant Not to Sue.** By applying for and accepting a Permit, Applicant agrees to release, defend, indemnify, and hold harmless the City and its Council, boards, commissions, officials, officers, agents, volunteers, and employees from and against any and all losses, damages, liabilities, claims, demands, suits, costs, and expenses, including, but not limited to, court costs and reasonable attorneys' fees, resulting from the Applicant's alleged and actual acts or omissions, or those of its officers, agents, or employees, in connection with the permitted work or the collocation, installation, occupation, presence, existence, operation, maintenance, modification, repair, replacement, relocation, or removal of the facilities covered by the Permit. This indemnity provision shall be applicable regardless of the merit or outcome of such claim or suit. By applying for accepting a Permit, Applicant also covenants not to sue over mater released herein.

79-8 - Attachment to City-Owned Poles in the Rights-of-Way

(a) **Exclusivity.** Any arrangement with any Person for the right to collocate on City-Owned Poles shall not be exclusive.

(b) **Collocation on City-Owned Poles.** Any Wireless Provider may collocate on City-Owned Poles on just, reasonable, and non-discriminatory rates, terms, and conditions, subject to the requirements of this Ordinance, the Applicable Codes, City Code, the UDO, and other applicable federal and state laws, rules, and regulations. A request to collocate under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the City, to be reimbursed by the wireless provider. In granting a request under this section, the City shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(c) **Rates, Terms, and Conditions.** Following receipt of the first request from a Wireless Provider to collocate on a City-Owned Pole, the City Manager or the City Manager's designee shall, within sixty (60) days, establish the rates, terms, and conditions for the use of, or attachment to, City-Owned Poles. Notwithstanding anything else in this section, the rate for collocation of Small Wireless Facilities on City-Owned Poles shall not exceed fifty dollars (\$50) per City-Owned Pole, per year.

(d) **Make-Ready Work.** The City will provide a good-faith estimate for any make-ready work necessary to enable the City-Owned Pole to support the requested collocation, including pole replacement, if necessary, and

to meet the City Code, the UDO, Applicable Codes, or industry standards, within sixty (60) days after receipt of a complete application. Make-ready work,

including any pole replacement, shall be completed within sixty (60) days of the written acceptance of the good-faith estimate by the Applicant. Fees for make-ready work shall not include costs related to pre-existing or prior damage or non-compliance or any consultant fees or expenses.