

Ron Jackson, President

Stafford L. Shenett, Sr., Dist 1

Toni Jones, District 2

Ebony Miller, District 3



Terry Woody, Sr., District 4

Tanglyn Madden, District 5

Sharri Thomas, District 6

Edwina Agee, District 7

PUBLIC NOTICE

DATE: July 18, 2018

TO: Members of City Council
Mayor Annette M. Blackwell

FROM: Council President Ron Jackson

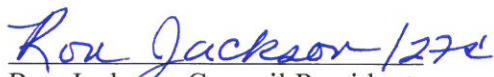
RE: **Special Meeting of Council**

In accordance with Article VII, Section 3, of the Charter of the City of Maple Heights a **Special Meeting of Council** will be held on **Wednesday, July 25, 2018, at 6:30 p.m.** at the Maple Heights Senior Center, 15901 Libby Road, Maple Heights, Ohio, to consider the following:

- **Appeal of Planning and Zoning Commission decision regarding 19807 Libby Road, Maple Heights, Ohio**
- **Appeal of Planning and Zoning Commission decision regarding 5709 Dunham Road, Maple Heights, Ohio**
- **Ordinance No. 2018-49: AN ORDINANCE ENACTING NEW CHAPTER 1030 "USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES" OF THE STREETS, UTILITIES AND PUBLIC SERVICES CODE, AND DECLARING AN EMERGENCY.**
- **Ordinance No. 2018-50: AN ORDINANCE ENACTING NEW CHAPTER 1483 "SMALL CELL DESIGN GUIDELINES" OF THE BUILDING AND HOUSING CODE, AND DECLARING AN EMERGENCY.**

Reading 1 (Blackwell)

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Ron Jackson, Council President
Maple Heights City Council

cc: Directors, Chiefs, Department Heads



Annette M. Blackwell
Mayor



Frank Consolo
Law Director

MEMORANDUM

To: Mayor Blackwell, Council President and Councilpersons
From: Frank Consolo, Law Director 
Date: July 18, 2018
Re: Small Cell Wireless Legislation

Over the past several months, at the request of the Mayor, the Law Department has been monitoring SB 331 and HB 480 and litigation initiated by several municipalities across the state. Through these bills, telecommunications companies proposed legislation seeking to amend Ohio Revised Code Chapter 4939 to eliminate the authority of municipalities to regulate small cell wireless facilities and related equipment on public property and in public rights of way (“ROW”).

The initial proposal was extremely broad and would give four telecommunications companies (AT&T, Verizon, Sprint and T-Mobile) and financial speculators nearly unrestricted access to any municipal structure that can support a wireless antenna – street lights, stop signs, water towers, public right of way, utility poles, etc. – and prohibit municipalities from recovering their costs in many cases.

The proposal also raised serious safety and security concerns for Ohio municipalities and the possible proliferation of new utility poles within the public ROW. Adoption of the legislative proposal would have taken decisions about the safety and aesthetics of municipal ROW and public properties out of the hands of local and instead allow such decisions to be made by entities with no local ties.

As a result, a number of municipalities brought suit claiming the initial proposal, SB331, was unconstitutional because it violates the home rule amendment to the Ohio Constitution. As a result HB 480 was introduced this year to amend SB 331.

Under HB 480, municipalities are required to permit these wireless facilities to be installed and maintained by one of the four major cellular phone service carriers (AT+T, Sprint, T-Mobile and Verizon). HB 480 allows municipalities to establish design guidelines that ensure the installation of these facilities has minimal impact on local communities. However, because HB 480 goes



into effect on July 31, 2018, municipalities are encouraged to adopt their local regulations and guidelines before then.

Several municipal organizations and the law firms for the municipalities over the past several months have been working on a template ordinance for municipalities to use to regulate the use of public property and ROW for these small cell wireless facilities as well as a template ordinance for design standards and guidelines. Accordingly the attached ordinances are based on those templates. Ordinance No. 2018-49 will enact new Chapter 1030 to regulate the use of our public property and ROW for the small cell wireless facilities. Ordinance No. 2018-50 will enact new Chapter 1483 to implement design standards and guidelines. We ask that these be passed on emergency so they are effective before July 31.

c: Clerk of Council

ORDINANCE NO.: 2018-50

INTRODUCED BY: Mayor Annette M. Blackwell

MOTION FOR ADOPTION BY:

AN ORDINANCE ENACTING NEW CHAPTER 1483 “SMALL CELL DESIGN GUIDELINES” OF THE BUILDING AND HOUSING CODE, AND DECLARING AN EMERGENCY.

WHEREAS, Substitute House Bill 478 (Sub. H.B. 478) will go into effect on July 31, 2018; and

WHEREAS, Sub. H.B. 478 amends Ohio Revised Code (O.R.C.) Chapter 4939 to provide, among other things, that municipalities permit wireless service providers, cable providers, video service providers, and their designated agents to construct, maintain, modify, operate, or replace small cell facilities and poles/support structures therefor in the public right-of-ways and also to attach small cell wireless facilities to certain municipally-owned support structures located in the right-of-way; and

WHEREAS, this Council desires to regulate small cell facilities, new wireless support structures, and the persons and entities who desire to construct, operate, and maintain such facilities in the City; and

WHEREAS, this Council finds that enacting new Chapter 1483 “Small Cell Design Guidelines” of the Building and Housing Code of the Codified Ordinances of the City of Maple Heights promotes the public health, safety, and welfare of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

Section 1. New Chapter 1483 “Small Cell Design Guidelines” of the Building and Housing Code of the Codified Ordinances of the City of Maple Heights is enacted to read as follows:

**“CHAPTER 1483
SMALL CELL DESIGN GUIDELINES**

1483.01 OVERVIEW AND PURPOSE, DEFINITIONS.

- (a) The purpose of these Design Guidelines is to:
- (1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City’s Right-of-Ways to protect the health, safety, and general welfare of the citizens of the City;
 - (2) Preserve the character of the City, including the City’s neighborhoods, downtown,

and historic districts, and protect property values;

- (3) Strike a balance between preserving the character of the City and enabling wireless telecommunications providers to deploy Small Cell Facilities and Wireless Support Structures so that residents, businesses, and visitors benefit from efficient wireless service availability through careful location, design, siting, landscaping, and camouflaging to blend these Facilities into the environment;
 - (4) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically-pleasing installation of Facilities and Wireless Support Structures; and
 - (5) To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable state and federal laws.
- (b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:
- (1) "Applicant" means any person or entity who submits an Application pursuant to these Design Guidelines and Chapter 1030 of the City's Codified Ordinances.
 - (2) "Application" means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
 - (3) "Accessory Equipment" means equipment used in conjunction with a Small Cell Facility and generally at the same location as the Small Cell Facility, including but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.
 - (4) "Antenna" means required towers and locations to include, but not limited to:
 - (A) Tall Sites: lattice towers, monopoles, tall building roof mounts, steeples, bell towers, water towers;
 - (B) Medium Sites: monopoles, roof mounts, stadium lighting, flag poles, and other required infill structures;
 - (C) Small Sites: street light poles, building mounts, utility poles, mast antennas, roof mounts, flagpoles, and other unique sites (micro cells, nano cells, distributed antenna systems, microcell networks).
 - (5) "City" means the City of Maple Heights.

- (6) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
- (7) “Design Guidelines” means the standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Ways established in this Chapter and promulgated by the Chief Building Official, in accordance with HB 478 and ORC 4939, to describe:
 - (A) Written design guidelines with objective, technologically feasible criteria that reasonably match the aesthetics and character of the City and City Historic District(s) including location, appearance, and concealment;
 - (B) Space reserved in the City Public Way or Right-of-Way or on a Wireless Support Structure or pole if owned by the City;
 - (C) Restrictions for support structures and Collocated Antennas up to 40 feet, or 35 feet or less as required by City zoning laws;
 - (D) Reasonable requirements for financial surety to ensure removal of abandoned or unused Facilities or damage to City property caused by operator or agent;
 - (E) Process for withholding, denying, or delaying City consent based on an operator’s failure to possess financial, technical and managerial resources to protect the City’s health, safety and welfare;
 - (F) Priorities for access to or occupancy of the City Right-of-Way or Public Way when the Right-of-Way or Public Way cannot accommodate all users, so that priorities are not unduly discriminatory and are competitively neutral;
 - (G) Documentation of existing and planned Facilities, topography, living organisms/tree canopy, structures, utilities, buildings, and infrastructures in place at time of permits.
- (8) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (9) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
 - (A) Operators;
 - (B) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
 - (C) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.

- (10) “Historic District” means a building, property, or site, or group of buildings, properties, or sites that are any 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 O.R.C. Section 149.311;
 - (C) An area identified and recognized by the City as a historic area/district.
- (11) “Operator” means a wireless service provider, cable operator, or video service provider that operates a Small Cell Facility and provides wireless information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. 153(20), and that are fixed in nature or use unlicensed spectrum.
- (12) “Public Way” or “Right-of-Way” means 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 comparable public use, which is owned or controlled by the City or other public entity or political subdivision.
- (13) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
- (14) “Small Cell Facility” means a wireless facility that meets both of the following requirements:
- (A) Each Antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an Antenna with exposed elements, the Antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and
 - (B) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight 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.
- (15) “Small Cell Use Permit” means the permit granted by the City authorizing an

Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of- Way.

- (16) “Substantial Modification” means a change to existing Facilities, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the federal Spectrum Act on February 22, 2012) that includes:
- (A) Increasing the height of the Wireless Support Structure by more than 10% or more than ten feet, whichever is greater;
 - (B) Adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the structure by more than six feet;
 - (C) Installing more than the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets;
 - (D) Installation of any new equipment cabinets in the ground if there are no pre-existing ground cabinets associated with the structure, or the installation of ground cabinets that are more than 10% larger in height overall volume than other ground cabinets associated with the structure, and/or
 - (E) Any excavation or deployment outside the current site.
 - (F) Removal of any concealment elements from the site.
- (17) “Underground Area” means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structures and facilities owned by the City or a transit authority, are located underground.
- (18) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in 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; and
 - (B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

1483.02 SMALL CELL FACILITY APPLICATIONS

- (a) Requests by Facilities Operators to locate or Collocate Small Cell Facilities and Wireless Support Structures within the City Right-of-Way and on private property fall into four categories:
- (1) Type 1: Existing Support Structures Application: Request to install on an existing support structure, both City-owned and privately-owned, that require no change or minimal change to the support structure;

- (2) Type 2: Substantial Modification to an Existing Support Structure Application: Request to install on an existing support structure, both City-owned and privately-owned, requiring one or more Substantial Modifications to the support structure;
 - (3) Type 3: New Wireless Support Structure and Associated Small Cell Facilities Application: Request to install a new Wireless Support Structure and associated small cell facility privately owned by the Facilities Operator (e.g. installation of a new, freestanding small cell facility);
 - (4) Type 4 - Removal of a Wireless Support Structure Application: Request to permanently remove an existing privately-owned Wireless Support Structure.
- (b) TYPE 1 - Existing Support Structures Application
- (1) Request involves installing or collocating Small Cell Facilities on an existing publicly-owned or City-owned support structure, such as a tower or light pole, and is not expected to include Substantial Modifications.
 - (2) Applications are administered by the Chief Building Official pursuant to this Chapter and Chapter 1030 of the City's Codified Ordinances. The process includes:
 - Pre-application meeting with City and Applicant
 - Completion of the City application form and payment of required fees
 - Maximum 60 day application review.
 - (3) Documentation of owner's permission to Collocate on privately-owned structures must be included with the application, in the form of a letter or other correspondence from the owner.
- (c) TYPE 2 - Substantial Modification to an Existing Support Structure Application
- (1) In the event the Applicant or the City determines that Substantial Modifications are required for a site or multiple site locations, Applicant must complete and file a Substantial Modification to an Existing Support Structure Application.
 - (2) Applications are administered by the Chief Building Official pursuant to this Chapter and Chapter 1030 of the City's Codified Ordinances. The process includes:
 - Pre-application meeting with City and Applicant
 - Completion of the City application form and payment of required fees
 - Maximum 90 day application review.

(d) TYPE 3 - New Wireless Support Structure and Associated Small Cell Facilities Application

- (1) Request involves a New Wireless Support Structure and Small Cell Facility by a privately-owned wireless carrier.
- (2) Applications are administered by the Chief Building Official pursuant to this Chapter and Chapter 1030 of the City's Codified Ordinances. The process includes:
 - Pre-application meeting with City and Applicant
 - Completion of the City application form and required fees
 - Maximum 120 day application review.

(e) TYPE 4 - Removal of a Wireless Support Structure Application

- (1) Request involves permanently removing an existing privately-owned Wireless Support Structure from the City Right-of-Way.
- (2) Applications are administered by the Chief Building Official pursuant to this Chapter and Chapter 1030 of the City's Codified Ordinances. The process includes:
 - Pre-application meeting with City and Applicant
 - Completion of the City application form and payment of required fees
 - Maximum 120 day application review.

1483.03 GENERAL STANDARDS AND DESIGN GUIDELINES

- (a) Facilities shall not be installed unless the Facilities are compliant with these Design Guidelines, Chapter 1030 of the City's Codified Ordinances, any Application requirements, and all applicable local, state, and federal laws. To the extent these standards and guidelines conflict with the regulations and standards set forth in Section 1298.20 or Chapter 1481 of the City's Codified Ordinances, these regulations shall prevail.
- (b) Facilities Operators shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in an Application for a Small Cell Use Permit.
- (c) All work shall be performed in a professional manner consistent with the highest standards of workmanship.
- (d) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.
- (e) Facilities shall not be installed in any location that causes any interference with the City's public safety radio system, traffic and emergency signal light system, or other City safety

communications systems or system components.

- (f) The City may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible.
- (g) Facilities shall not interfere with existing or planned street trees, planned street and/ or business development.
- (h) Signage shall be mounted on all new Facilities providing the Facilities Operator's name, an emergency contact phone number, an informational contact number, and all other information required by law. Unless otherwise prohibited by law, signage shall be discreet in color and shall match the Facilities and surrounding area and font size used on the sign shall be no smaller than 9 point font and no larger than 14 point font.
- (i) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from Facilities.
- (j) Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.
- (k) The City may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but are not limited to, paint, fencing, public art, strategic placement, and placement within existing or replacement street furniture.
- (l) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.
- (m) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the City, and the color shall match the Facilities. The City may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the City determines a non-matching color would better fulfill the purposes of these Design Guidelines.
- (n) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facility Operator's sole expense as soon as practicable, but no later than ten (10) days from the date the Facilities Operator receives notice of the graffiti.
- (o) The City reserves the right to reserve space for future public safety, transportation,

pathways/walkways and/or building use in the Right-of-Way or on a Wireless Support Structure in a documented plan in place at the time of application filing. If replacement or relocation of a Wireless Support Structure is required to accommodate the collocation of a small cell wireless facility or future use, the operator shall pay for and install the replacement of the Wireless Support Structure, which must accommodate future use.

1483.04 SPECIFICATIONS FOR COLLOCATION

- (a) The collocation of Small Cell Facilities on existing support structures, owned by the City or another entity and engineered to accommodate such facilities, is strongly encouraged to minimize the amount of infrastructure visible within the City and Right-of-Way.
- (b) Within the City, existing wooden utility poles are located in the railroad right-of-way. These support structures are not owned by the City but may be eligible for collocation of small cell facilities, pending permission of the legal owner(s) of the structures. If possible, utilizing these structures will, in the opinion of the City, reduce the visual impact of additional wireless equipment.
- (c) The City will not authorize any attachments to City-owned infrastructure that negatively impacts the structural integrity of the associated infrastructure for current or future planned use.
- (d) The City may condition approval of Collocation on replacement or modification of the Wireless Support Structure at the operator's cost if the City determines that replacement or modification is necessary for compliance with City standards. The City may also retain ownership of a modified or replacement Wireless Support Structure.
- (e) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.
- (f) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least six (6) feet above ground level. If Small Cell Equipment is projecting toward the street, then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level. Where possible, Antenna shall be fully enclosed within a shroud, attached to as near possible to the top of a pole, and on the side of the pole opposite the direction of vehicular traffic on the same side as the Right-of-Way.
- (g) All cables, wiring, and conduits shall be firmly secured to the pole structure and enclosed within a separate rigid external conduit attached directly to the pole or offset not more than four inches with mounting brackets. Conduit color will be gray, or as specified by the City, to match the required enclosure color.

- (h) All Small Cell Facilities, cabinets, shrouds, conduit, and mounting hardware proposed in conjunction with installation on an existing pole or structure shall be as approved by the Chief Building Official.

1483.05 ANTENNAS

- (a) Antennas and Accessory Equipment must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.
- (b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet.
- (c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister, shroud, or other enclosure. All Accessory Equipment associated with the Antenna shall be concealed and shall not visibly protrude from the shroud or canister.
- (d) The width of the canister or other shroud encasing the Antenna and Accessory Equipment shall not exceed the width of the narrowest portion of the Wireless Support Structure.
- (e) The enclosure or shroud shall be painted to match or complement the Wireless Support Structure.
- (f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.
- (g) Antennas shall not impair light or views from adjacent window(s).
- (h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The City may approve a side-mounted Antenna, at the City's discretion, if the side-mounted Antenna would be more appropriate given the environment, neighborhood character, or overall site appearance, or if it would promote the purposes of these Design Guidelines.

1483.06 WIRELESS SUPPORT STRUCTURE-MOUNTED EQUIPMENT

- (a) All Wireless Support Structure-mounted Small Cell Equipment other than the Antenna(s) and electric meter must be concealed within an equipment cabinet.
- (b) Equipment cabinets shall be mounted flush to the Wireless Support Structure.
- (c) Equipment cabinets shall be stacked together on the same side of the Wireless Support Structure and oriented away from any windows and doorways to minimize visual impacts thereupon.

- (d) The equipment cabinets must be non-reflective and painted, wrapped or otherwise colored to match the Wireless Support Structure.

1483.07 GROUND-MOUNTED SMALL CELL EQUIPMENT

- (a) The City shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant:
 - (1) Proposes the ground-mounted installation in connection with a Collocation; and
 - (2) Shows that the Small Cell Equipment cannot be feasibly placed on a Wireless Support Structure or in an underground vault.
- (b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not technically feasible, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.
- (c) All ground-mounted Small Cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.
- (d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in anyway.

1483.08 CABLES

- (a) All cables, conduit and wiring shall be located inside conduit and inside the Wireless Support Structure or an equipment cabinet.
- (b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible.

1483.09 ELECTRICAL METERS

- (a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.
- (b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. If not prohibited by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

1483.10 UTILITY LINES

Service lines shall be undergrounded to avoid additional overhead lines. Undergrounded cables and wires must transition directly into the Wireless Support Structure base without any external junction box.

1483.11 SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES

- (a) A Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:
 - (1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or
 - (2) An existing Wireless Support Structure is located within 100 feet or less of the proposed site of a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.
- (b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the City.
 - (1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the City.
 - (2) The City may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.
- (c) The overall height of a replacement Wireless Support Structure, including proposed Collocated Antenna, shall not be greater than forty (40) feet in height above ground level. Notwithstanding the foregoing height limitation, the overall height of a replacement Wireless Support Structure, including proposed Collocated Antenna, shall not be more than thirty-five (35) feet in height above ground level in the Residential Single Family-Low Density District, Residential Single Family-Medium Density District, Residential Two-Family District, Residential Multi-Family District, or any other residential zoning district in the City so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three hundred (300) feet of the location of the proposed replacement Wireless Support Structure.
- (d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other

- (e) pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator and installed at no cost to the City.
- (f) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the City.
 - (1) If partially removed, the original Wireless Support Structure foundation shall be taken back to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half ($\frac{1}{2}$) inch to three-quarter ($\frac{3}{4}$) inch of rock material. The remaining eight (8) inches shall be native soil and landscaped with natural vegetation that is the same as the surrounding vegetation.
 - (2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The type of backfill material and compaction required is: (a) one-half ($\frac{1}{2}$) sack slurry for the entire depth in paved areas, and (b) one-half ($\frac{1}{2}$) sack slurry for the entire depth except the top twelve (12) inches will be native soil in landscaped areas with natural vegetation that is the same as the surrounding vegetation.

1483.12 SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES

- (a) New Wireless Support Structures shall be designed and constructed to accommodate Small Cell Equipment from at least two (2) Operators on the same Wireless Support Structure.
- (b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles.
- (c) In residential districts, new Wireless Support Structures shall be located at the shared property line between two residential parcels where the parcels intersect the Right-of-Way.
- (d) In non-residential districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines where the parcels intersect the Right-of-Way.
- (e) New Wireless Support Structures shall not interfere with any metered parking space.
- (f) A new Wireless Support Structure shall not be located in front of a building entrance or exit.

- (g) The overall height of a new Wireless Support Structure, including proposed Collocated Antenna, shall not be greater than forty (40) feet in height above ground level. Notwithstanding the foregoing height limitation, the overall height of a replacement Wireless Support Structure, including proposed Collocated Antenna, shall not be more than thirty-five (35) feet in height above ground level in the Residential Single Family-Low Density District, Residential Single Family-Medium Density District, Residential Two-Family District, Residential Multi-Family District, or any other residential zoning district in the City so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure.
- (h) The City may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure. Unless otherwise specified by the City, new wood Wireless Support Structures are prohibited.

1483.13 HISTORIC DISTRICT REGULATIONS

All Small Cell Equipment to be located in the Right-of-Way in any Historic District in the City, shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the City may specify, as long as such measures do not have the effect of prohibiting the Facilities Operator's provision of reasonable service in the City. Such measures are not considered part of the Small Cell Facility for purposes of facility size restrictions in this Chapter or Chapter 1030 of the Codified Ordinances. The Facilities Operator may submit a waiver request pursuant to Section 1483.14(d) if the Facilities Operator can demonstrate that underground placement is technologically infeasible.

1483.14 UNDERGROUND AREA REGULATIONS

- (a) Whenever any existing electric utilities, cable facilities, telecommunications facilities or other facilities are located underground within a Public Way of the City, the Facilities Operator must locate its Facilities underground.
- (b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.
- (c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.
- (d) An Operator may apply to the Planning and Zoning Commission for a waiver of the underground placement requirement if the Operator is unable to achieve its service objective and provide reasonable service in the City under the following circumstances:
 - (1) From a location in the public Right-of-Way where the prohibition does not apply;

- (2) From a utility easement the service provider has the right to access;
- (3) From other suitable locations or structures made available by the City at reasonable rates, fees and terms.
- (e) Submission of a waiver request pursuant to subsection (d) is subject to the Facilities Operator's agreement to toll the timeframes set forth in this Chapter and in Section 1030.08(a) of the Codified Ordinances by fourteen (14) days.

1337.15 REQUIRED SETBACKS

- (a) Preferred Alignment: The centerline of new support structures shall be installed in alignment with existing poles where present, or with street trees along the same side of the Right-of-Way, unless otherwise required and approved by Planning and Zoning Commission.
- (b) Minimum Distance from Travel Way: So as not to impede or impair public safety or legal use of the Right-of-Way by the traveling public, in no case shall any portion of a new support structure be located less than two feet from the travel way, edge line, face of curb, sidewalk, bike lane or shared path.
- (c) Minimum Distance from Existing Objects in the Right-of-Way: New Wireless Support Structures shall be located a minimum of twelve (12) feet from any permanent object or existing lawful encroachment in the Right-of-Way to allow for access.
- (d) Minimum Distance from Intersections and Driveway Aprons: Wireless Support Structures shall be located a minimum of twelve (12) feet from driveway aprons and located outside of intersection sight distance triangles whenever possible.
- (e) Minimum Distance from Street Trees and Protected Trees in the Vicinity: Wireless Support Structures shall be sited outside of the critical root zone and canopy drip line of existing trees and any existing protected trees having a six (6) inch or greater diameter at breast height (DBH) located in the immediate vicinity, including protected trees on private property. The City will have final say as to protected trees within the City proper, including any historic areas, foliage, trees, that must remain protected.
- (f) Fall Zone: Fall-zone requirements for Wireless Support Structures shall be consistent with fall-zone requirements for other structures of similar type and height within the Right-of-Way.

1483.16 SEVERABILITY

Sections and subsections of this chapter and the several parts and provisions thereof are hereby declared to be independent sections, subsections, parts and provisions. The holding of any

such section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause shall not affect nor render invalid any other such section, subsection, part or provision thereof.

1483.99 PENALTIES; EQUITABLE REMEDIES

- (a) Any person or entity found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with any of the provisions of these Design Guidelines shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.
- (b) Nothing in these Design Guidelines shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this the Design Guidelines.”

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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 such formal action, were in meetings open to the public in compliance with all legal requirements including O.R.C. Section 121.22.

Section 3. This Ordinance constitutes an emergency measure necessary for the public safety, health and welfare and for the further reasons stated in the Preamble and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2018

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council

ORDINANCE NO.: 2018-49

INTRODUCED BY: Mayor Annette M. Blackwell

MOTION FOR ADOPTION BY:

AN ORDINANCE ENACTING NEW CHAPTER 1030 “USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES” OF THE STREETS, UTILITIES AND PUBLIC SERVICES CODE, AND DECLARING AN EMERGENCY.

WHEREAS, Substitute House Bill 478 (Sub. H.B. 478) will go into effect on July 31, 2018; and

WHEREAS, Sub. H.B. 478 amends Ohio Revised Code (O.R.C.) Chapter 4939 to provide, among other things, that municipalities permit wireless service providers, cable providers, video service providers, and their designated agents to construct, maintain, modify, operate, or replace small cell facilities and poles/support structures therefor in the public right-of-ways and also to attach small cell wireless facilities to certain municipally-owned support structures located in the right-of-way; and

WHEREAS, this Council desires to regulate small cell facilities, new wireless support structures, and the persons and entities who desire to construct, operate, and maintain such facilities in the City; and

WHEREAS, this Council finds that enacting new Chapter 1030 “Use of Public Ways For Small Cell Wireless Facilities and Wireless Support Structures” of the Streets, Utilities and Public Services Code of the Codified Ordinances of the City of Maple Heights promotes the public health, safety, and welfare of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, that:

Section 1. New Chapter 1030 “Use of Public Ways For Small Cell Wireless Facilities and Wireless Support Structures” of the Streets, Utilities and Public Services Code, of the Codified Ordinances of the City of Maple Heights is enacted to read as follows:

**“CHAPTER 1030
USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES
AND WIRELESS SUPPORT STRUCTURES**

**1030.01 PURPOSE, DEFINITIONS AND AUTHORITY TO PROMULGATE
DESIGN GUIDELINES.**

- (a) The purpose of this Chapter is to:
 - (1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City’s Right-of-Ways to protect the health, safety, and welfare of the citizens of the City;

- (2) Preserve the character of the City, including the City's neighborhoods, downtown, and historic districts, and protect property values;
 - (3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically-pleasing installation of Facilities and Wireless Support Structures; and
 - (4) To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable state and federal laws.
- (b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:
- (1) "Applicant" means any person or entity who submits an Application pursuant to this Chapter.
 - (2) "Application" means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
 - (3) "Accessory Equipment" means equipment used in conjunction with a Small Cell Facility and generally at the same location as the Small Cell Facility, including but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.
 - (4) "City" means the City of Maple Heights.
 - (5) "Collocation" or "Collocate" means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
 - (6) "Design Guidelines" means the standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, set forth in Chapter 1483 of the Codified Ordinances of the City of Maple Heights and promulgated by the Chief Building Official.
 - (7) "Facilities" means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
 - (8) "Facilities Operator" means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
 - (A) Operators;
 - (B) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support

- Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
- (C) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.
- (9) “Operator” means a wireless service provider, cable operator, or video service provider that operates a Small Cell Facility and provides wireless information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. 153(20), and that are fixed in nature or use unlicensed spectrum.
- (10) “Public Way” or “Right-of-Way” means 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 comparable public use, which is owned or controlled by the City or other public entity or political subdivision.
- (11) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
- (12) “Small Cell Facility” means a wireless facility that meets both of the following requirements:
- (A) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and
- (B) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight 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.
- (13) “Small Cell Use Permit” means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.
- (14) “Substantial Modification” means a change to existing Facilities, measured from the Facilities as originally permitted, including any modifications that were reviewed and approved by the City prior to the enactment of the federal Spectrum Act on February 22, 2012, that includes one or more of the following:
- (A) Increasing the height of the Wireless Support Structure by more than 10% or more than ten feet, whichever is greater;

- (B) Adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the structure by more than six feet;
 - (C) Installing more than the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets;
 - (D) Installation of any new equipment cabinets in the ground if there are no pre-existing ground cabinets associated with the structure, or the installation of ground cabinets that are more than 10% larger in height overall volume than other ground cabinets associated with the structure;
 - (E) Any excavation or deployment outside the current site;
 - (F) Removal of any concealment elements from the site.
- (15) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in 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; and
 - (B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.
- (c) The Chief Building Official is authorized and directed to promulgate the City’s Design Guidelines as set forth in Chapter 1483 of the Codified Ordinances of the City of Maple Heights with objective, technologically feasible criteria. To the extent these regulations conflict with the regulations set forth in Section 1298.20 or Chapter 1481 of the City’s Codified Ordinances, these regulations shall prevail.

1030.02 CONSENT REQUIRED.

- (a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the Chief Building Official in accordance with the requirements in this Chapter, the City’s Design Guidelines, O.R.C. Chapter 4939, and all applicable state and federal laws and regulations.
- (b) Applicants are strongly encouraged to contact the Chief Building Official and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.
- (c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this Chapter, and the City’s Design Guidelines. No Small Cell Use Permit shall be construed as any warranty of title.

1030.03 PERMIT APPLICATION TYPES.

Applicants shall classify their Application as one of the following types:

- (a) Type 1: Existing Support Structures Application: Request to install on an existing support structure, both City-owned and privately-owned, that require no change or minimal change to the support structure
- (b) Type 2: Substantial Modification to an Existing Support Structure Application: Request to install on an existing support structure, both City-owned and privately-owned, requiring one or more Substantial Modifications to the support structure.
- (c) Type 3: New Wireless Support Structure and Associated Small Cell Facilities Application: Request to install a new wireless support structure and associated small cell facility privately owned by the Facilities Operator (e.g. installation of a new, freestanding small cell facility);
- (d) Type 4: Removal of a Wireless Support Structure Application. Request to permanently remove an existing privately-owned wireless support structure.

1030.04 CONSOLIDATED CONSENT APPLICATIONS.

- (a) Pursuant to O.R.C. Section 4939.0312, an Applicant may file one consolidated application for up to thirty (30) individual small cell Facilities or thirty (30) individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.
 - (1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.
 - (2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.
 - (3) Applications for Facilities and Wireless Support Structures cannot be commingled.
- (b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

1030.05 APPLICATION FEE.

- (a) The fee for each Application is Two Hundred Fifty Dollars (\$250.00). The fee is adjusted upward by ten percent (10%) every five years, rounded to the nearest Five (5) Dollars, beginning in the year 2023.
- (b) An Application shall not be deemed complete until the fee is paid.

- (c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application.

1030.06 ATTACHMENT FEE.

- (a) In addition to the Application fee, the Facilities Operator shall pay an annual attachment fee of Two Hundred Dollars (\$200.00) to the City for each Small Cell Facility attached to a municipally-owned Wireless Support Structure. The fee is adjusted upward by ten percent (10%) every five years, rounded to the nearest five (5) dollars, beginning in the year 2023.
- (b) The first-year attachment fee shall be paid when the Collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the Collocation is complete.

1030.07 REQUIRED APPLICATION MATERIALS.

The Applicant must submit the following documentation to the Chief Building Official with each Application.

- (a) Completed Application form including the identity, legal status, and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be responsible for the Facilities in any way.
- (b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.
- (c) Fully dimensional scaled site plan (scale no smaller than one inch equals forty (40) feet). The site plan must include:
 - (1) The exact proposed location of the Facilities within the Right-of-Way;
 - (2) All existing Facilities with all existing transmission equipment;
 - (3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within one hundred (100) feet surrounding the proposed Facilities.
 - (4) The legal property boundaries within one hundred (100) feet surrounding the proposed Facilities;
 - (5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within one hundred (100) feet surrounding the proposed Facilities; and

- (6) Access and utility easements within one hundred (100) feet surrounding the proposed Facilities.
- (d) Elevation drawings (scale no smaller than one (1) inch equals ten (10) feet) of the proposed Facilities.
- (e) Evidence that the Applicant provided notice by mail to all property owners within 300 feet of the proposed Facilities prior to submitting the Application. The notice shall include:
 - (1) Name of the Applicant;
 - (2) Estimated date Applicant intends to submit the Application;
 - (3) Detailed description of the proposed Facilities and the proposed location; and
 - (4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one (1) inch equals forty (40) feet.
- (f) A preliminary installation/construction schedule and completion date.
- (g) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed Small Cell Equipment.
- (h) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.
- (i) A landscape plan that demonstrates screening of proposed Small Cell Equipment.
- (j) Drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:
 - (1) The manufacturer's name and model number;
 - (2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and
 - (3) The noise level generated by the equipment, if any.
- (k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by and has an agreement with an Operator who will be the end-user of the Facilities.

1030.08 APPLICATION REVIEW.

- (a) Applications shall be evaluated in the timeframes as follows:
 - (1) Type 1 Applications 60 days
 - (2) Type 2 Applications 90 days
 - (3) Type 3 Applications 120 days
 - (4) Type 4 Applications 120 days
- (b) Applications shall be reviewed for completeness and compliance with this Chapter, Section 1483 of the Codified Ordinances, and all applicable local, state, and federal laws. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete.
- (c) The timeframes set out in subsection (a) may also be tolled as follows:
 - (1) If the City receives between fifteen (15) and thirty (30) applications in a thirty-day period, then the City may toll for an additional twenty (20) days.
 - (2) If the City receives more than thirty (30) applications in a thirty-day period, then the City may toll for an additional fifteen (15) days for every fifteen (15) applications received.
 - (3) By mutual agreement between the Applicant and the City.
 - (4) When an Applicant submits an underground area waiver pursuant to the Design Guidelines, in which case the City may toll for an additional thirty (30) days.
- (d) If two (2) Applicants request to Collocate on the same Wireless Support Structure or two (2) Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 1030.16, then the Chief Building Official may resolve the conflict in any reasonable and nondiscriminatory manner.
- (e) If an Application is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application include, but are not limited to:
 - (1) Failure to provide information required under Section 1030.07;
 - (2) Failure to comply with the City's Design Guidelines;
 - (3) Failure to provide financial surety pursuant to Section 1030.15;
 - (4) Failure to remove abandoned Facilities as required under Section 1030.12;

- (5) Conflict with the historic nature or character of the surrounding area;
- (6) Conflict with planned future improvements in the Right-of-Way; and/or
- (7) Failure to comply with generally applicable health, safety, and welfare requirements.

907.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

- (a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.
- (b) A Small Cell Use Permit issued to an Operator shall have duration of no longer than ten (10) years. Permits may be renewed for five (5) year terms.
- (c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of ten (10) years or the duration of the Facilities Operator's agreement with an Operator provided pursuant to Section 1030.07(k), whichever is shorter.
- (d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.
- (e) Pursuant to O.R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within 180 days of issuance of the Permit, unless the delay is caused by:
 - (1) Make-ready work for a municipally-owned Wireless Support Structure; or
 - (2) The lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within sixty (60) days after the Small Cell Use Permit was granted.

If the additional time to complete the installation exceeds three hundred sixty (360) days after the issuance of the Permit, then the Permit shall be deemed terminated regardless of the cause of the delay.

- (f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within 180 days of issuance of the Small Cell Use Permit.
- (g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 907.10, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual attachment fee was due.
- (h) At any time and upon service of a sixty (60)-day advance written notice to the City, a Small Cell Use Permit may be terminated by the Facilities Operator.

- (i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.
- (j) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the Permit.

1030.10 ANNUAL REGISTRATION.

- (a) All Facilities Operators with consent to occupy or use the Right-of-Way shall register with the City each calendar year between January 1 and January 31 on a form provided by the City. The form will allow the Facilities Operator to indicate when there is no change in the information required, and when such indication is submitted, previously provided information will be considered current and will be relied upon. Facilities Operators who obtain consent to occupy the Right-of-Way after September 30 of any year need not file an Annual Registration for next calendar year.
- (b) The purpose of registration under this Section is to:
 - (1) Compile, update and supplement the City's database so that the City has accurate and current information concerning the Facilities Operators that own or operate Facilities in the City's public Right-of-Way;
 - (2) Assist the City in monitoring the usage of the public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use, and the use is consistent with the best management and care of the public Right-of-Way;
 - (3) Assist the City in the collection and enforcement of any municipal taxes, fees, or other charges that may be due the City; and
 - (4) Assist the City in monitoring compliance with local, state and federal laws.
- (c) Registration forms will be provided by the City and shall require the following information:
 - (1) Any material changes to the information the Facilities Operator provided to the City in the Application for Small Cell Use Permit including, but not limited to:
 - (A) The identity, legal status, and federal tax identification number of the Facilities Operator, including any affiliates or agents.
 - (B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Facilities Operator's registration statement and available at all reasonable times to be notified in case of emergency.
 - (C) Evidence that the Facilities Operator is in compliance with the insurance, indemnity and financial surety requirements pursuant to this Chapter.

- (D) Such other information as the Chief Building Official may reasonably require.
- (d) In addition to the annual registration requirement, each Facilities Operator shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the Facilities Operator has notice of the need for such change.

1030.11 NONCONFORMING FACILITIES.

- (a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this Chapter but that do not comply with the requirements of this Chapter may remain in the Right-of-Way but shall be considered a “Nonconforming Facility.”
- (b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant to Section 1030.10 within ninety (90) days of the date this ordinance takes effect.
- (c) If a Nonconforming Facility is damaged or destroyed beyond repair, any replacement Facility must be designed in accordance with all provisions of this Chapter, the Design Guidelines, and state and federal law and regulations.

1030.12 ABANDONED AND DAMAGED FACILITIES.

- (a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within three hundred sixty five (365) days from the date the use was discontinued, the Facilities shall be considered a nuisance and the City may remove the Facilities at the expense of the Facilities Operator.
- (b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than thirty (30) days after obtaining written notice that the Facilities are damaged. If the damaged Facilities are not repaired within thirty (30) days, then the damaged Facilities shall be considered a nuisance and the City may repair or remove the Facilities at the expense of the Facilities Operator.

1030.13 INSURANCE REQUIREMENTS.

- (a) As a condition of the City’s consent to occupy the Right-of-Way, a Facilities Operator must secure and maintain the following liability insurance policies insuring both the Facilities Operator and as additional insureds the City, its elected and appointed officers, officials, agents and employees:
 - (1) Comprehensive general liability insurance with limits not less than:
 - (A) Five Million Dollars (\$5,000,000.00) for bodily injury or death to each person;

- (B) Five Million Dollars (\$5,000,000.00) for property damage resulting from any one (1) accident; and
 - (C) Five Million Dollars (\$5,000,000.00) for all other types of liability.
 - (2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000.00) for each person and Three Million Dollars (\$3,000,000.00) for each accident.
 - (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000.00).
 - (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000.00).
- (b) Each such insurance policy shall contain the following endorsement:
- "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Chief Building Official of such intent to cancel or not to renew."
- (c) Within sixty (60) days after receipt by the City of the notice provided for in subsection (b) above, and in no event later than thirty (30) days prior to the cancellation of the policy, the Facilities Operator shall obtain and furnish to the City replacement insurance policy meeting the requirements of this Section.

1030.14 INDEMNIFICATION.

A Facilities Operator shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Operator who owns or operates Small Cell Facilities and wireless service in the Right-of-Way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, maintaining or removing Facilities in the Right-of-Way.

1030.15 FINANCIAL SURETY.

- (a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and applicable state and federal law. The financial surety must be in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.
- (b) The City may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any City property

caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within ten (10) business days after the City notifies the Facilities Operator that it has drawn on the financial surety.

1030.16 RESERVED SPACE.

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-Way and on Wireless Support Structures for future utility, safety, or transportation uses. Such space may be reserved in an ordinance or plan approved by the Mayor, City Council, Chief Building Official, or Planning and Zoning Commission.

1030.17 REMOVAL OR RELOCATION OF FACILITIES.

- (a) The City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.
- (b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving notice that the Facilities are located improperly.

1030.18 NOTICE OF WORK.

A Facilities Operator shall notify the Chief Building Official of all non-emergency work within ten (10) calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.

1030.19 APPEAL.

An Applicant may appeal a decision made by the Chief Building Official to the Planning and Zoning Commission per Chapter 1262 of the City's Codified Ordinances.

1030.20 SEVERABILITY

Sections and subsections of this Chapter and the several parts and provisions thereof are hereby declared to be independent sections, subsections, parts and provisions. The holding of any such section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause shall not affect nor render invalid any other such section, subsection, part or provision thereof.

1030.99 PENALTIES; EQUITABLE REMEDIES.

- (a) Any person or entity found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined not less than

One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.

- (b) Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.”

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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 such formal action, were in meetings open to the public in compliance with all legal requirements including O.R.C. Section 121.22.

Section 3. This Ordinance constitutes an emergency measure necessary for the public safety, health and welfare and for the further reasons stated in the Preamble and provided it receives the affirmative vote of two-thirds (2/3) of the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2018

Ron Jackson, Council President

Annette M. Blackwell, Mayor

Approved as to legal form:

Frank Consolo, Director of Law

ATTEST: _____
Leonette F. Cicirella, Clerk of Council

I, Leonette F. Cicirella, Clerk of Council of the City of Maple Heights, County of Cuyahoga, State of Ohio, do hereby certify the above to be a true and exact copy of the original as contained in the records of my office and that the same has been and will remain duly posted as required by law.

Date: _____

Leonette F. Cicirella, Clerk of Council