Ordinance 2018 - 02

An Ordinance to establish the standards for the placement of small wireless facilities in covered areas in the Town of North, South Carolina; and for other purposes.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of North, South Carolina, duly assembled in Council this thirty-first day of May, 2018, that the attached Ordinance 2018-02 is hereby adopted for the Town of North.

THIS DONE IN COUNCIL ASSEMBLED THIS 31th DAY OF MAY, 2018.

ATTEST:

_____
Anne B. Culler
Town Clerk

MAYOR:

_____
Patricia Carson

TOWN COUNCIL:

_____
Deborah Cook

_____
Daniel Jackson

_____
Julius Jones

_____
Jeff Washington

First Reading: May 31, 2018
Public Hearing: June 11, 2018
Second Reading: June 11, 2018

Ordinance 2018 - 02

AN ORDINANCE TO ESTABLISH THE STANDARDS FOR THE PLACEMENT OF SMALL WIRELESS FACILITIES IN COVERED AREAS IN THE TOWN OF NORTH, SOUTH CAROLINA; AND FOR OTHER PURPOSES.

WHEREAS, the Town of North encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while managing Public Rights-of-Way in a manner that promotes the interests of the public health, safety and welfare; and,

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

WHEREAS, the Town recognizes that Small Wireless Facilities together with high capatown transport medium such as fiber optic cabling may be effectively deployed in Public Rights-of-Way; and,

WHEREAS, this Ordinance is intended to grant municipal consent to use of Rights-of-Way and establish a standard application process to streamline the issuance of necessary permits in a manner that is not a barrier to competition, and does not unnecessarily delay the implementation and installation of Small Wireless Facilities,

Section 1. ***Definitions.***

"Antenna" means communication equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.

"Applicable Codes" means uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in Title 6, Chapter 9 of the South Carolina Code of Laws, local amendments to those codes authorized by state law, and local codes or ordinances which impose requirements defined in Section 5 of this Ordinance including objective design and concealment standards to

regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.

"Applicant" means any person who submits an Application to a Town and is a Wireless Services Provider or a Wireless Infrastructure Provider.

"Application" means a request submitted by an Applicant for a permit to (i) Collocate Small Wireless Facilities; or, (ii) construct, install, maintain, operate, replace or modify a Utility Pole or Wireless Support Structure.

"Cable, Communications, Fiber or Electric Easement" means an easement, granted to a cable or video service provider, a communications service provider (including without limitation a telephone utility), a fiber optics cable services provider, or an electric services provider created or authorized by state law to provide such services, that runs parallel to and abuts or within a Rights-of-Way and is occupied by existing Utility Poles or Wireless Support Structures carrying electric distribution lines, wires, cable, conduit, fiber optic cable for telecommunications, cable or electric service or supporting municipal street lights, or security lights. The term Cable, Communications, Fiber or Electric Easement excludes easements for service drops or lines connecting the customer's premises to the cable, communications, fiber or electrical provider.

"Town-Owned Pole" means (i) a Utility Pole owned or operated by the Town in Covered Areas, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Town in a Covered Area that supports only Wireless Facilities. The term does not include a Utility Pole owned or operated by and accounted for as an asset of a municipal electric utility.

"Collocate" means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to an existing Wireless Support Structure or Utility Pole located in Covered Areas within the jurisdiction of the Town. "***Collocation***" has a corresponding meaning.

"Covered Areas" means the surface of, and the space above and below, any public "Rights-of-Way," "ROW," "Town Rights-of-Way," "Public Rights-of-Way," and/or "Cable, Communications, Fiber or Electric Easement" as those terms are defined herein.

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

"Decorative Pole" means a Utility Pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or a temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal practices.

"Design District" means an area that is zoned, or otherwise designated by municipal ordinance, and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

"Fee" means a one-time charge.

"Historic District" means an area that is zoned or otherwise designated as a Historic District under municipal, state or federal law and for which the Town maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

"Micro Wireless Facility" means a Small Wireless Facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Town.

"Rate" means a recurring charge.

"Rights-of-Way" or "ROW" or "Town Rights-of-Way" or "Public Rights-of-Way" means that area on, below, or above a public roadway, highway, street, sidewalk, alley dedicated to, managed or controlled by the Town, County or the State of South Carolina, but not including a federal interstate highway, in the Town.

"Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of not more than six (6) cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications

demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"Transmission Pole" means a pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

"Underground District" means an area that is designated by ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing above ground structures in a Covered Area and for which the Town maintains and enforces standards on a uniform and nondiscriminatory basis.

"Utility Pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control devices, traffic control or directional signage, or a similar function regardless of ownership, including Town-Owned Poles. Such term shall not include structures supporting only Wireless Facilities, nor shall it include Wireless Support Structures.

"Wireless Facility" means equipment at a fixed location that enables Wireless Services between user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, Antennas, 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 structure or improvements on, under, or within which the equipment is Collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between Wireless Support Structures or Utility Poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an Antenna.

"Wireless Infrastructure Provider" means any Person including a Person authorized to provide telecommunications service in the State, that builds, installs or maintains Utility Poles, wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures.

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

"Wireless Services Provider" means a Person who provides Wireless Services.

"Wireless Support Structure" means a freestanding structure, such as a monopole or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole.

Section 2. ***Purpose and Scope.***

(a) The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in Covered Areas within the jurisdiction of the Town.

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

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

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

(iii) Prevention of interference with other facilities and operations of facilities lawfully located in Covered Areas or public property;

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

(v) Preservation of the character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places or locally designated Historic Districts; and,

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

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

(a) ***Permitted Use and Consent.*** Collocation of a Small Wireless Facility on an existing Utility Pole or Wireless Support Structure, or a new or modified Utility Pole or Wireless Support Structure installed in a Covered Area shall be a permitted use, except in supplemental review districts where such facilities are a conditional use, subject to administrative review, conditions and other requirements in Section 5. In accord with Article VIII, Section 15 of the State Constitution and related municipal code and ordinance provisions, the Town consents to the use of Public Rights-of-Way by permit holders acting in compliance with this Ordinance.

(b) ***Permit Required.*** No person shall place a Small Wireless Facility in a Covered Area without first filing a Small Wireless Facility Application and obtaining a permit, except as otherwise provided in this Ordinance.

(c) ***Permit Applications.*** All Small Wireless Facility Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the Town. 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, and the Town shall endeavor to protect materials so designated from public disclosure to the fullest extent permitted by state law.

(d) ***Application Requirements.*** The Small Wireless Facility permit Application shall be made by the Applicant, or its duly authorized representative as noted in a notarized statement from a Person with the Applicant with authority to make such an authorization, and shall contain the following:

(i) The Applicant's name, address, telephone number and e-mail address;

(ii) Facility owner's name, address, telephone number and email address, if different from Applicant;

(iii) Intended facility use: owner operated or owner leased capatown;

(iv) 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;

(v) A general description of the proposed scope of work for the Collocation of the Small Wireless Facility. 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, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed;

(vi) Identification of any consultant that is acting on behalf of the Applicant and that is authorized to speak with the Town, or a designee of the Town, on the area of consultation for the Applicant even if the Applicant cannot be available;

(vii) Verification from an appropriate representative of the Applicant that the Small Wireless Facility shall comply with all Applicable Codes;

(viii) Verification of payment of the annual municipal consent or administrative fee for telecommunications companies to use Public Rights-of-Ways pursuant to Section 58-9-2230;

(ix) Verification of local business license, if applicable;

(x) Evidence the Applicant is duly authorized to do business in South Carolina;

(xi) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission or the Federal Communications Commission or evidence that it is not required;

(xii) A copy of an approved South Carolina Department of Transportation encroachment permit and all documents required by SCDOT as part of the encroachment permit application, if the proposed location is within a SCDOT Right-of-Way; and,

(xiii) If the proposed location is outside of a SCDOT Right-of-Way, a statement that the Applicant has a lease, attachment agreement or other authorization from the owner of the Utility Pole or structure proposed for Collocation.

(e) ***Routine Maintenance and Replacement.*** An Application shall not be required for:

(i) Routine maintenance;

(ii) The replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height; or

(iii) The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles and/or Wireless Support Structures in compliance with the National Electrical Safety Code by a Wireless Services Provider or a Wireless Infrastructure Provider that is authorized to occupy the Public Rights-of-Way and that is remitting a consent, franchise, or administrative Fee pursuant to S.C. Code Ann. § 58-9-2230.

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

(g) ***Consolidated Application.*** An Applicant seeking to Collocate multiple Small Wireless Facilities may, at the Applicant's discretion, file a consolidated Application and receive

a single permit for up to twenty (20) Small Wireless Facilities. Provided, however, the Town's denial of any site or sites within a single Application shall not affect other sites submitted in the same Application. The Town shall grant a permit for any and all sites in a single Application that it does not deny subject to the requirements of this Section.

(h) ***Application Fees.*** Unless otherwise provided by law, and except as to telecommunication companies exempted pursuant to S.C. Code § 58-9-2230, all Applications for permits pursuant to this Ordinance shall be accompanied by a Fee of $100.00 for each Small Wireless Facility, except that the Fee for Small Wireless Facilities addressed in a consolidated Application shall be $100.00 each for the first five Small Wireless Facilities and $50.00 for each additional Small Wireless Facility up to a maximum of twenty (20) Small Wireless Facilities. For clarity, any Applicant that pays either a franchise, consent Fee, or administrative Fee pursuant to the requirements of S.C. Code § 58-9-2230 shall not be required to pay any building permit Fee, zoning permit Fee, encroachment Fee, degradation Fee, or any other Fee assessed on a telecommunications provider for its occupation of or work within the ROW.

(i) ***Interference with Public Safety Equipment.*** A Small Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire and emergency services) equipment.

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

(a) ***Review of Small Wireless Facility Applications.*** The Town shall review the Application for a Small Wireless Facility permit for conformity with applicable requirements of this Ordinance, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

(i) Within ten (10) days of receiving an Application, the Town must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Town must specifically identify the missing information.

(ii) Make its final decision to approve or deny the Application within sixty (60) days of submission of a completed Application .

(iii) Notify the Applicant in writing of its final decision, and if the Application is denied, specify the basis for a denial, including citations to federal, state or local code provisions and/or statutes on which the denial was based.

(iv) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Town and resubmit the Application within thirty (30) days of the denial, and the Town shall approve or deny the revised Application within thirty (30) days of receipt of it. The subsequent review by the Town shall be limited to the deficiencies cited in the original denial.

(b) ***Review Deadline.*** If the Town fails to act on an Application within the sixty (60) day review period (or within the thirty (30) day review period for an amended Application), the Applicant may provide notice that the time period for acting has lapsed and the Application is then deemed approved.

(c) ***Review of Eligible Facilities Requests.*** Notwithstanding any other provisions of this Ordinance, the Town shall approve and may not deny Applications that constitute eligible facilities requests for modification of an eligible support structure that does not substantially change the physical dimensions of such structure as provided in 47 CFR 1.40001, within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

(d) ***Compensation.*** Subject to the limitations set forth in Section 3(h) herein, every permit shall include as a condition the Applicant's agreement to pay such lawful franchise Fees, business license taxes, administrative Fees and consent Fees as are permitted under applicable South Carolina and federal law. The Applicant shall also pay all applicable ad valorem taxes, service Fees, sales taxes, or other taxes and Fees as may now or hereafter be lawfully imposed on other businesses within the Town.

Section 5. ***Requirements for Small Wireless Facilities in Covered Areas.***

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

(i) The Town may require a proposed Wireless Facility be designed to not be significantly more readily apparent or plainly visible (to a reasonable person of ordinary sensibilities) from Covered Areas than existing utility structures, poles and

equipment located within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure.

(ii) Where Small Wireless Facilities are determined to be appropriate, the use of reasonable stealth and concealment treatments, low profile equipment and control boxes, and screening may be required to avoid significant negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the Town upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or concealment treatments or imposes an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.

(iii) Supplemental review districts identified in Section 5(c) and listed in Appendix A may be subject to a higher level of review.

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

(i) The height of an Antenna of a Collocated Small Wireless Facility shall be limited to the greater of ten (10) feet above (a) the height of an existing or modified Utility Pole or Wireless Support Structure; or (b) the height of a new Utility Pole or Wireless Support Structure as provided in (ii) below.

(ii) The height of a new or modified Utility Pole, or Wireless Support Structure is limited to the greater of (a) the tallest Utility Pole, excluding Transmission Poles, or Wireless Support Structure located in the same Covered Area, measured from grade, in place within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure as of the effective date of this Ordinance; or (b) in the absence of any such Utility Pole or Wireless Support Structure, either (i) forty (40) feet in any area zoned exclusively for single family residential use, unless a waiver is granted for good cause shown, or (ii) fifty (50) feet in any other area.

(iii) Collocation is not allowed on a Decorative Pole less than twenty (20) feet in height.

(c) ***Supplemental Review Districts.*** Collocated Small Wireless Facilitates and new or modified Utility Poles or Wireless Support Structures located in supplemental review districts shall be a conditional use and subject to the design and aesthetic requirements and review processes for

structures specified in this Ordinance establishing the supplemental review district(s) in addition to the requirement of this Ordinance, provided that the Town will work in good faith with the Applicant to accommodate the installation of Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures in supplemental review districts to the fullest extent practicable. The Town reserves its right to maintain and implement the following types of supplemental review districts.

(i) ***Underground Districts***. A Wireless Services Provider or a Wireless Infrastructure Provider shall comply with nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground structures in the Covered Area in these districts. Nothing in this section shall prohibit the use or replacement of existing Utility Poles or Wireless Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to administrative review by the zoning administrator, appropriate design and concealment and a finding that such use does not increase the height by more than three (3) feet.

(ii) ***Historic and Design Districts.*** As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Historic District or a Design District, the Town may require that a Wireless Services Provider or a Wireless Infrastructure Provider comply with the design and aesthetic standards of the Historic District or Design District to minimize the impact to the aesthetics in a Historic District or on a Design District's Decorative Poles. If design and concealment treatments are determined on review by the Town to be insufficient to mitigate harm to the Historic District or Design District, the Application may be denied.

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

(d) ***Appeals, Special Exceptions and Variance Requirements***. Appeals of administrative decisions and requests for special exceptions and variances from the provisions of

this Ordinance, when strict application would result in an unnecessary hardship or in the inability to deploy needed Small Wireless Facilities, shall be heard and decided by the Board of Zoning Appeals or equivalent board for architectural, design or historical district reviews. An applicant seeking a Special Exception to construct a new Decorative Pole, Utility Pole or other Wireless Support Structure to Collocate a Small Wireless Facility in an Underground District shall demonstrate, including certification through an engineer, that it has diligently attempted to locate the proposed Decorative Pole, Utility Pole, Wireless Support Structure, or Small Wireless Facility outside of the Underground District and that placement of the Decorative Pole, Utility Pole, Wireless Support Structure, or Small Wireless Facility within the Underground District is necessary to provide the needed wireless coverage or capatown, and one or more of the following conditions exist supporting a Special Exception:

(i) No existing Utility Pole or Wireless Support Structure is located within the location search radius or to the extent a Utility Pole or Wireless Support Structure is located within the search radius, such Utility Pole or Wireless Support Structure:

a. Is not available for Collocation under commercially reasonable rates, terms, and conditions;

b. Cannot accommodate the Collocation of the Small Wireless Facility and meet the technical requirements necessary to deliver adequate wireless service coverage or capatown; or

c. Would require modifications exceeding the three (3) feet height limitation imposed in section 5(c)(i).

(ii) The only available option to deliver adequate wireless service coverage or capatown in the search radius requires modifications to an existing Utility Pole or Wireless Support Structure exceeding the three (3) feet height limitation imposed in section 5(c)(i) or the installation of a new Utility Pole or Wireless Support Structure for Collocation of a Small Wireless Facility, or

(iii) The applicant has demonstrated other circumstances that, in the reasonable discretion of the [board, etc.], warrant a special exception or variance.

The Applicant shall abide by the design, stealth and concealment treatments imposed as conditions of the special exception.

(e) ***Existing Supplemental Review Districts.*** Supplemental review districts approved by the Town as of the effective date of this Ordinance are listed in Appendix A. The Code provisions authorizing the district, applicable design guidelines or manual, review authority and appeal jurisdiction are specified in Appendix A. Nothing in this Ordinance shall prohibit or otherwise limit the Town from establishing additional supplemental review districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the additional supplemental review district remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures as set out in Section 3(e)(i) and (ii) of this Ordinance, and not to any provisions otherwise applicable to the additional supplemental review district. If a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily replaces such facilities in a manner that does not comply with Section 3(e)(ii) of this Ordinance, or if a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the additional supplemental review district.

(f) ***Repair of Damage.*** A Wireless Services Provider or a Wireless Infrastructure Provider shall repair all damage to a Town Right-of-Way directly caused by the activities of the Wireless Services Provider or the Wireless Infrastructure Provider, while occupying, installing, repairing, or maintaining Wireless Facilities, Wireless Support Structures, Town Utility Poles, or Utility Poles and to return the Right-of-Way to its functional equivalence before the damage. If the Wireless Services Provider or the Wireless Infrastructure Provider fails to make the repairs required by the Town within forty-five (45) days after written notice, unless the Town and the Wireless Services Provider or the Wireless Infrastructure Provider agree in writing to a longer time period, the Town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The Town may maintain an action to recover the costs of the repairs.

Section 6. ***Effect of Permit.***

(a) ***Authority Granted: No Property Right or Other Interest Created.*** A permit from the Town authorizes an Applicant to undertake only certain activities in accordance with the

Ordinance and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the Covered Area.

(b) ***Duration.*** Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Ordinance shall be valid for a period longer than twelve (12) months unless both Town and Applicant agree to a reasonable extension and all required Fees are paid for the term regardless of construction. The inability of the Applicant to obtain electrical power or backhaul transport services to serve the Wireless Facility such that it is operational within the twelve (12) months due to the action or inaction of third-party utility providers shall not result in the invalidity of the permit.

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

(a) ***Notice***. Within ninety (90) days following written notice from the Town, a Wireless Services Provider or a Wireless Infrastructure Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Wireless Facilities or Wireless Support Structures within the Rights-of-Way whenever the Town, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the Rights-of-Way.

(b) ***Emergency Removal or Relocation of Facilities.*** The Town retains the right to cut or move any Wireless Facility or Wireless Support Structure located within its Rights-of-Way as the Town, in its reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the Town shall notify the Wireless Services Provider or the Wireless Infrastructure Provider and provide opportunity to move its own Wireless Facilities or Wireless Support Structure prior to the Town cutting or removing a Wireless Facility or Wireless Support Structure and the Town shall notify the Wireless Services Provider or the Wireless Infrastructure Provider after cutting or removing a Wireless Facility.

(c) ***Abandonment of Facilities.*** Upon abandonment of a Wireless Facility or Wireless Support Structure within the Town Rights-of-Way, the Wireless Services Provider or the Wireless Infrastructure Provider shall notify the Town within ninety (90) days of such abandonment. Following receipt of such notice the Town may direct the Wireless Services Provider or the

Wireless Infrastructure Provider to remove all or any portion of the Wireless Facility or Wireless Support Structure if the Town, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.

(d) ***Abandonment by Inaction.*** At any point when a Wireless Services Provider or a Wireless Infrastructure Provider fails to pay any required Fee, or annual payment to the Town, and fails to respond within sixty (60) days to a written inquiry from the Town as to whether the Wireless Services Provider or the Wireless Infrastructure Provider intends to continue to operate a Wireless Facility or Wireless Support Structure, for whatever reason, the Wireless Facility shall be deemed abandoned and the Town may, at its sole option, remove all or any portion of the Wireless Facility or Wireless Support Structure, or take other action as authorized by law, including recovery of actual costs incurred in removing the Wireless Facility or Wireless Support Structure.

Section 8. ***Attachment to Town-Owned Utility Poles in the Covered Areas.***

(a) ***Annual Rate.*** The rate to place a Small Wireless Facility on a Town-Owned Pole in Covered Areas shall be fifty ($50.00) dollars per year per wooden pole or two hundred ($200.00) dollars per year for all other Town-Owned Poles. This rate is in addition to reimbursement to the Town for any expenses for make-ready work. The Town reserves the right to require a pole attachment agreement to further define the terms and conditions of attachments to Town-Owned Poles. The rates specified in this section shall not apply to poles owned, or operated and accounted for as an asset of, a municipal electric utility.

(b) ***Cease Payment.*** A Wireless Services Provider or a Wireless Infrastructure Provider is authorized to remove its facilities at any time from a Town-Owned Pole in Covered Areas and cease paying the annual rate to the Town as of the next due date for payment following the removal.

(c) ***Make-Ready.*** For Town-owned Utility Poles in Covered Areas, the Applicant shall reimburse the Town for expenses for any reasonable make-ready work. The Town shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Services Provider or the Wireless Infrastructure Provider.

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

Section 9. S*everability*.

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

THIS DONE IN COUNCIL ASSEMBLED THIS 14th DAY OF MAY, 2018.