

**AN ORDINANCE
TO ESTABLISH THE STANDARDS FOR THE PLACEMENT OF SMALL WIRELESS
FACILITIES IN COVERED AREAS IN THE CITY OF NORTH CHARLESTON, SOUTH
CAROLINA; AND FOR OTHER PURPOSES (HEREINAFTER THE "ORDINANCE").**

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

WHEREAS, the City recognizes that Small Wireless Facilities together with high capacity transport medium such as fiber optic cabling may be effectively deployed in 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.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NORTH CHARLESTON, SOUTH CAROLINA, that Appendix A-Zoning Regulations of the City of North Charleston (hereinafter the "Zoning Ordinance") is hereby amended to add a new Article 11 entitled "Standards for Placement of Small Wireless Facilities in Covered Areas," to read as follows:

Section 11-1. Definitions. The definitions set forth in this Section 11-1 are only applicable to Article 11 of the Zoning Ordinance, and to the extent any of the defined terms are inconsistent with the same term defined in Article IX of this Zoning Ordinance, the definitions set forth in this Article 11 shall control.

"Accessory Equipment". Any equipment serving or being used in conjunction with a Wireless Facility or Wireless Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, 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.

"Administrative Approval" means zoning approval that the Zoning Director or designee is authorized to grant after Administrative Review.

"Administrative Review" means an evaluation of an Application for Small Wireless Facility by the Zoning Director or the evaluation of an Application for Encroachment Permit by the Public Works Director or their designee.

"Antenna" means communication equipment that transmits or receives electromagnetic radiofrequency 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 11-5 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 for Encroachment Permit or Application for Small Wireless Facility to the City and is a Wireless Services Provider or a Wireless Infrastructure Provider.

“Application for Encroachment Permit” means an ***“Application”*** submitted by an Applicant for an Encroachment Permit to be reviewed by the Department of Public Works. In the proper context, an Application for Encroachment Permit may be referred to as an Application.

“Application for Small Wireless Facility” means an Application submitted by an Applicant for a permit to (i) Collocate a Small Wireless Facilities; or, (ii) construct, install, maintain, operate, replace or modify a Utility Pole, Wireless Support Structure or Decorative Pole. In the proper context, an Application for Small Wireless Facility may be referred to as an Application.

“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 is 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.

“City-Owned Pole” means (i) a Utility Pole owned or operated by the City 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 City in a Covered Area that supports only Wireless Facilities.

“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 City. ***“Collocation”*** has a corresponding meaning.

“Concealment Elements” means any design feature, including, but not limited to, painting, landscaping, and/or shielding requirements and restrictions on proportions, or physical dimensions in relation to the surrounding area or supporting structures that are intended to make a Wireless Facility or any supporting structure supporting it less visible to the casual observer.

“County” means as applicable either Berkeley, Charleston or Dorchester County.

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

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

“Decorative Pole” means a pole 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 a City ordinance, and for which the City maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

“Facilities” means any equipment and physical assets owned by a Permittee or by a Permittee’s customers and under the control of the Permittee that are reasonably necessary and appropriate for the provision of Wireless Services including, but not limited to Wireless Facilities, Small Wireless Facilities, Accessory Equipment, aboveground and underground fiber optic and coaxial cable, conduit, wires, and any supporting structures such as Utility Poles, Wireless Support Structures, or Decorative Poles, whether existing, replacement or new structures, and whether referred to singly or collectively.

“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 City 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 than 2.5 cubic feet, excluding a single antenna and mount; and, (ii) any exterior antenna or mount is no longer than 11” inches.

“Permittee” means any Person that has been granted approval of an Application for Encroachment Permit or Application for Small Wireless Facility in the Covered Areas pursuant to this Ordinance, including its successors and assigns.

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

“Public Works Director” means the Director of the Department of Public Works for the City of North Charleston or his/her designee. In the proper context, the Public Works Director may be referred to as the “Director.” The Public Works Director and the Zoning Director may be referred to herein collectively as the **“Directors.”**

“Rate” means a recurring charge.

“Rights-of-Way” or “ROW” or “City 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 City, County or the State of South Carolina, but not including a federal interstate highway, in the City.

“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 Accessory 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.

“Tower” means any structure built for the sole or primary purpose of supporting any Federal Communications Commission (the **“FCC”**) licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. This definition does not include Utility Poles. It is the intent of this Ordinance for this definition to be consistent with that definition set forth in 47 C.F.R. 1.40001(b)(9). No Tower may be constructed in the Covered Areas.

“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, including, but not limited to, any such district established pursuant to **Chapter 17, Article VII** of the Code of Ordinances, and other public or private restrictions, that prohibit installing above-ground structures in a Covered Area and for which the City 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 City-Owned Poles. Such term shall not include structures supporting only Wireless Facilities, nor shall it include Wireless Support Structures or Decorative Poles.

“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 Service(s) Provider” means a Person who provides Wireless Services.

“Wireless Support Structure” means a freestanding structure or other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole.

“Zoning Director” means the Zoning Administrator of the City of North Charleston or his/her designee. In the proper context, the Zoning Director may be referred to as the “Director.” The Public Works Director and the Zoning Director may be referred to herein collectively as the **“Directors.”**

Section 11-2. 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 City.

(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, Utility 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 existing 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.

(c) It is the intent of this Ordinance to ensure the continued compliance with the existing Code of Ordinances, as well as applicable Federal Statutes and the Rules and Regulations of the FCC, including, but not limited to:

(i) The provisions of Article V, Section 17-141, of this Ordinance regarding the **“Use of Streets by Utilities,”** as amended, shall continue to apply to the use of the Covered Areas as defined herein.

(ii) The provisions of Article V, Public Rights-of-Way Consent, Section 10.5-147 of the Code of Ordinances titled **“Public Rights-of-Way Consent Fee for Telecommunications Companies Using City-Owned or Controlled Streets to Provide Telecommunications Services”** shall apply to any Application for Small Wireless Facility or Application for Encroachment Permit under this Ordinance;

(iii) The provisions of Article III, Telecommunications and Cable Code, Section 10.5-50.1 of the Code of Ordinances titled **“Business License Tax on Retail Telecommunications Services”** shall apply to any Wireless Infrastructure Provider or Wireless Services Provider providing retail telecommunications services in the City;

(iv) To ensure compliance with 47 U.S. Code Section 253 – Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7) – Mobile Services; Federal Communications Commission Declaratory Ruling and

Report and Third Order released September 27, 2018 (the “**Small Wireless Facility Order**”) and the Federal Communications Commission Final Rules attached to the Small Wireless Facility Order as Appendix A, both as may be amended in the future (the “**FCC Final Rules**”).

Section 11-3. Permitted Use and Consent.

- (a) **Consent Subject to Satisfaction of Conditions.** In accord with Article VIII, Section 15 of the State Constitution and related municipal code and ordinance provisions, the City consents to the use of Public Rights-of-Way by Applicants, and for the Collocation of a Small Wireless Facility on an existing Utility Pole, Wireless Support Structure, or Decorative Pole, or for the placement of a new, modified or replacement Utility Pole, Wireless Support Structure or Decorative Pole for the Collocation of a Small Wireless Facility, installed in the Covered Areas, and for the installation of other Facilities necessary for the operation of any such Small Wireless Facility, subject to the following requirements:
- (i) **Administrative Review.** The Applicant’s compliance with the Administrative Review process set forth herein, and the satisfaction of the conditions and other requirements of this Ordinance;
- (ii) **SCDOT/County Encroachment Permit.** An Applicant obtaining any required SCDOT or County issued Encroachment Permits issued by the South Carolina Department of Transportation (the “SCDOT”) or County as to State or County owned or controlled Rights-of-Way;
- (iii) **Compliance with Ordinances.** The Applicant is acting in compliance with this Ordinance, the policies governing the use of the City’s Rights of Way by the Department of Public Works as they may be adopted and amended from time to time, and any other relevant City Ordinance, including, but not limited to those portions of the Code of Ordinances referenced in Section 11-2(c) herein;
- (iv) **Payment of Consent Fees.** Payment of the annual municipal consent fee for telecommunications companies to use Public Rights-of-Ways as required by *S.C. Code Ann.* Section 58-9-2230, and to the extent not already paid, the initial consent fee shall be paid to the City on or before the approval of any Application for Small Wireless Facility or Application for Encroachment Permit, and thereafter, on January 2 of each calendar year that any permit issued pursuant to this Ordinance by the Zoning Director or the Director of Public Works remains in effect;
- (v) **Payment of Business License Taxes.** Payment by the Applicant, or any Wireless Services Provider that shall provide any type of retail telecommunications services, as that term is defined in *S.C. Code Ann.* Section 58-9-2200, from the proposed Small Wireless Facility, of the required annual maximum business license tax as required by *S.C. Code Ann.* Section 58-9-2220;
- (vi) **Limited Scope of Consent to Use Public Rights-of-Way.** The City’s consent to the use of the Public Rights-of-Way and/or the issuance of any permit under this Ordinance for the use of the Public Rights-of-Way shall be limited and restricted as follows: (i) it shall be non-exclusive; (ii) it shall be at the Applicant’s or Permittee’s sole cost and expense; (iii) it shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Rights-of-Way; (iv) it does not grant any Permittee any property interests in the Public Rights-of-Way; (v) any permit issued is not divisible, and the Permittee may not grant any Person the right to use or occupy the Public Rights-of-Way; and (vi) is limited to the specific and exclusive purposes as stated herein.
- (vii) **No Rights of Use of Structures or Property.** The City’s consent to the use of the Public Rights-of-Way or the approval of any Application for Small Wireless Facility or the issuance of any Encroachment Permit does not automatically confer upon any Applicant or Person any right to place or

attach any Wireless Facilities directly upon or to structures located in the Covered Areas, including City-Owned Poles, that are owned by the City or by a third party, or to install Wireless Facilities on land or structures owned by the City or a third party outside the Covered Areas, unless and until any and all required additional rights or permission is obtained from the land or structure owned by the City or a third party.

(b) **Permits Required.** No person shall Collocate a Small Wireless Facility, or modify or install a Utility Pole, Wireless Support Structure or Decorative Pole in the Covered Areas as contemplated by this Ordinance without first filing a Small Wireless Facility Application and obtaining a permit, and to the extent relevant, filing an Application for an Encroachment Permit and obtaining an Encroachment Permit. For purposes of clarity, no type of Tower as that term is defined in Article 11-1 herein shall be permitted in the Covered Areas. This requirement shall apply to all Covered Areas.

(c) **Permit Applications.** All Applications for a Small Wireless Facility filed pursuant to this Ordinance shall be on an electronic form, as it may be amended from time to time by the Zoning Director, as required by the City. All Applications for Encroachment Permit shall be on an electronic form, as it may be amended from time to time by the Public Works Director, as required by the City. The Applicant may designate portions of its Applications 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 City shall endeavor to protect materials so designated from public disclosure to the fullest extent permitted by state law.

(d) **Application for Small Wireless Facility Requirements.** The Application for a Small Wireless Facility permit and/or the Application for Encroachment Permit 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 that information required in the Application forms, that information otherwise required by this Ordinance, and shall also contain the following information and certifications:

- (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) The intended use of the Small Wireless Facility;
- (iv) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant concerning the filing of an Application;
- (v) A general description of the proposed scope of work for the Collocation of the Small Wireless Facility or the replacement or construction of a new, modified or replacement Utility Pole, Wireless Support Structure or Decorative Pole for the placement of a 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) Engineering drawings or site plans that demonstrate the following:
 - 1. Height, size, shapes, and colors of the proposed Small Wireless Facility, Utility Pole, Wireless Support Structure, Decorative Pole, Accessory

Equipment, Facilities, any proposed utility connections, and any proposed ground mounted or underground Accessory Equipment.

2. How the Small Wireless Facility, Accessory Equipment and any other related equipment shall be placed upon the Utility Pole, Wireless Support Structure or Decorative Pole, and to the extent not placed on the Utility Pole, Wireless Support Structure or Decorative Pole, the location and dimensions of any Accessory Equipment that will be placed on the ground or underground.
3. Applicable signage required by the owner of the Utility Pole, Wireless Support Structure or Decorative Pole warning anyone working on or near the Utility Pole, Wireless Support Structure or Decorative Pole of potential radiofrequency emissions; and a marker or insignia legible at street level identifying the owner of the Small Wireless Facility and its contact information for emergency purposes.
4. To the extent required by the owner of the Utility Pole, Wireless Support Structure or Decorative Pole, or the City, the location of a power cut-off switch that operates to terminate electrical power to any part of the Small Wireless Facility emitting radio-frequency radiation, as well as proper signage to demonstrate the location of the cut-off switch and its proper operation.
5. Documentation, both written and visual, demonstrating how the Small Wireless Facility, Utility Pole, Wireless Support Structure or Decorative Pole are consistent with both: (i) the overall design and character of the neighborhood and locations in which it will be placed, and with publicly available planned improvements to those neighborhoods; and (ii) with the corridor in which they may be placed, including publicly available planned corridor improvements, including, but not limited to, planned undergrounding of utilities.
6. Identify any Design District or Historic District that the Small Wireless Facility may be located in, and how the Applicant meets any additional requirements of such Design District or Historic District.
7. Identify if the location of the Small Wireless Facility is in any defined Underground District, including publicly available planned corridor improvements, including, but not limited to, planned undergrounding of utilities.
8. Identify the location of all Facilities, and for any fiber optic or coaxial cable, conduit or wires, identify the specific location of such Facilities, if they are overhead or underground, and the path of its beginning and its end. This location demonstration should specifically identify which Small Wireless Facilities any such fiber optic or coaxial cable, conduit or wires shall connect to.

(vii) Identification of any Wireless Services Provider that will provide Wireless Services at the location of the Small Wireless Facility (e.g., the owner of the Small Wireless Facility shall allow a Wireless Provider to transmit its radiofrequency through the Small Wireless Facility);

(viii) When an Application for a Small Wireless Facility is part of a larger network of planned Small Wireless Facilities, provide plans for the proposed network of Small Wireless Facilities as a whole so that the Directors may evaluate the planned Small Wireless Facilities project as a whole in order to ensure the overall aesthetic impact of the project or other potential negative impacts to the safety of the Covered Areas is minimized.

(ix) Evidence that the Utility Pole, Wireless Support Structure, or Decorative Pole, or any new, modified or replacement Utility Pole, Wireless Support Structure or Decorative Pole has the structural capacity for the Collocation of a Small Wireless Facility and all Accessory Equipment.

(x) Certificates of Insurance in the form meeting the requirements of Section 11-8 herein.

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

(xii) Verification of payment of the annual municipal consent or administrative fee for telecommunications companies to use Public Rights-of-Ways pursuant to *S.C. Code* Section 58-9-2230;

(xiii) Verification of a local business license held by the Applicant and the Applicant's customer which will transmit or receive radiofrequency emissions from the Small Wireless Facility, if applicable;

(xiv) Evidence the Applicant and the Applicant's customer who will transmit or receive radiofrequency emissions from the Small Wireless Facility, if applicable, are duly authorized to do business in South Carolina;

(xv) 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 FCC or evidence that it is not required;

(xvi) A copy of an approved SCDOT Encroachment Permit and all documents required by SCDOT as part of the SCDOT Encroachment Permit application, if the proposed location is within a SCDOT Right-of-Way, or a copy of a County Encroachment Permit and all documents required by the County as part of the County Encroachment Permit application, if the proposed location is within a County Right-of-Way.

(xvii) A copy of the Applicant's license, lease, attachment agreement or other authorization (with financial and other commercial terms and conditions redacted) from the owner of the Utility Pole, Wireless Support Structure or Decorative Pole proposed for Collocation of a Small Wireless Facility;

(xviii) Any other additional information relevant to the Applications as may be deemed relevant by either the Zoning Director or the Director of Public Works as may be permitted by applicable State and Federal laws; and

(xix) Written acknowledgement by the Applicant that no rights of ownership by Applicant's customers who will transmit or receive radiofrequency emissions from the Small Wireless Facility shall permit any such customer to enter upon, or use the Rights-of-Way, in any other manner or at any other place, including to add to, or modify or install any Wireless Facilities at any proposed location, which shall be Applicant's sole responsibility. Further, Applicant may not install any Wireless Facilities it does not own at a proposed location unless the Person for on whose behalf the equipment will be installed acknowledges and agrees, in a form acceptable to the City Attorney, that the City has not granted it a franchise or consent to be in the Rights-of-Way for the installation of the Wireless Facilities subject of

any Application; that it is bound by the Applicant's representations; that it shall have no rights or claims against the City of any sort related to the Wireless Facilities; that its Facilities may be subject to taxes, fees or assessments as provided in this Ordinance, and that the City may treat any equipment owned by such Person as if it were owned by the Applicant for all purposes (including, but not limited to, removal and relocation). The acknowledgment and agreement may be provided for all locations within the City, and need not be provided separately, site by site.

(xx) Applicants are encouraged to design any new, modified, or replacement Utility Poles, Wireless Support Structures or Decorative Poles such that each may accommodate the equipment of multiple Wireless Service Providers.

(xxi) All Applications for Small Wireless Facilities shall contain the following sworn certification:

1. The Small Wireless Facility will be suitably designed, installed and maintained in accordance with good and safe engineering practices, and will comply with applicable ground clearances, electrical safety clearances, and other standard requirements of the National Electrical Safety Code (the "NESC"), and all applicable federal, state and local laws.
2. That all radiofrequency radiation emitted from the Small Wireless Facility will be and shall remain at all times in compliance with all applicable governmental and industry safety codes as applied in circumstances where there is uncontrolled access to the radiofrequency radiation emitted from the Small Wireless Facility.
3. The Small Wireless Facility shall not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b) as set forth in the FCC Final Rules.
4. The installation and operation of the Small Wireless Facility will not interfere with any existing public or private utility systems, or any public safety systems.
5. The owner or Permittee of the Small Wireless Facility, including any Wireless Services Provider utilizing the Small Wireless Facility, will comply with any environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to the Small Wireless Facility's installation, maintenance, operation, removal, or abandonment.
6. The owner or Permittee of the Small Wireless Facility, including any Wireless Service Provider utilizing the Small Wireless Facility, and the Small Wireless Facility itself, shall upon its installation and for all periods thereafter, comply with all Applicable Codes.

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

- (i) Routine maintenance of an existing permitted Small Wireless Facility; or
- (ii) 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 pursuant to an existing valid Encroachment Permit or SCDOT or County Encroachment Permit, and that is remitting to the City on an annual basis a consent, franchise, or administrative Fee pursuant to S.C. Code Ann. § 58-9-2230.
- (f) **Information Updates.** Any amendment to information contained in either an Application for a Small Wireless Facility or Application for Encroachment Permit shall be submitted in writing to the Zoning Director or Director of Public Works within ten (10) business days after the change necessitating the amendment.
- (g) **Application Fees.** Applications for Small Wireless Facilities under this Ordinance and Applications for Encroachment Permits shall be accompanied by a Fee as set by the City from time to time for each such Application by the City or the Directors. Any Fees charged for any application necessary for the approval of all components of the Small Wireless Facility shall be consistent with those amounts as outlined in the Small Wireless Facility Order, the FCC Final Rules, any limitations imposed by S.C. Code Ann. Sections 58-9-2220 and 58-9-2230, and any future legislation approved by the South Carolina General Assembly.
- (h) **No Interference with Public Safety.** 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 11-4. *Action on Applications/Timelines for Review and Approval/Denial.*

- (a) **Review of Small Wireless Facility Applications.** The Zoning Director shall review any Application for a Small Wireless Facility permit and the and Director of Public Works shall review any Application for an Encroachment Permit, and to the extent applicable, the Zoning Board of Appeals shall hear and decide any appeal of any decision by the Directors. The Directors shall review all Applications for conformity with the applicable requirements of this Ordinance and other City Code of Ordinances or requirements, including electrical permit applications and building permit applications, and shall issue all required permits for the construction of a Small Wireless Facility or any Encroachment Permit on nondiscriminatory terms and conditions subject to the following requirements:
 - (i) **Initial Review/Notification of Completeness.** Within ten (10) days of receiving any Application necessary for the complete approval of a new Small Wireless Facility in the Covered Areas, the Directors must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Directors must specifically identify in writing that the Application is materially incomplete and specifically identify the missing documents or information that the Applicant must submit to render the Application complete and the specific provision of this Ordinance, rule or regulation creating this obligation. An Application is incomplete if it omits or withholds any required information or fails to provide information in sufficient detail to determine whether the work will be performed in accordance with and will result in a Small Wireless Facility that complies with all applicable City Code of Ordinances, Applicable Codes, and other applicable laws. If the Applicant responds, but the Application remains incomplete, the applicable Directors shall notify the Applicant in writing that the Application remains incomplete within ten (10) days, and also identify the missing documents or information that the Applicant must submit to render the Application complete and the

specific provision of this Ordinance, rule or regulation creating this obligation. If an Applicant is notified that the Application is incomplete, the time for all approvals is reset.

(ii) **The timing of a Final Decision.** The Directors shall make their final decision to grant Administrative Approval or deny an Application for Collocation of a Small Wireless Facility, an Application to modify a Utility Pole, Wireless Support Structure or Decorative Pole for Collocation of a Small Wireless Facility, or an Application for Encroachment Permit within sixty (60) days of submission of the completed Applications. The Directors shall make their final decision to grant Administrative Approval or deny an Application for a new, modified or replacement Utility Pole, Wireless Support Structure, or Decorative Pole for the placement of a Small Wireless Facility and Application for Encroachment Permit within ninety (90) days of submission of the completed Applications.

(iii) **Tolling Agreement.** Notwithstanding the time requirements set forth herein, the Directors may enter into an agreement with any Applicant extending the time for action on any Application, where such an extension is permitted under applicable law.

(b) **Approval or Denial of Applications.** If the Zoning Director determines that the Application for a Small Wireless Facility and the Public Works Director determines that the Application for Encroachment Permit comply with the requirements of this Ordinance, and each Director determines that the Applications comply with any other applicable City Code of Ordinances, and that that the Small Wireless Facility has been designed in a manner that meets the requirements of this Ordinance and as well the existing publicly available planned design of the neighborhood, corridor or Covered Areas in which it is to be placed, the Applications may be approved. Otherwise, the Applications may be denied. Decisions to approve or deny an Application are final but subject to appeals to the Zoning Board of Appeals as set forth herein.

(i) **Notification of Decision.** The Directors shall notify the Applicant in writing of the final decisions, and if any Application is denied, specify the basis for a denial, including citations to federal, state or local code provisions or statutes on which the denial was based.

(ii) **Revised Applications/Resubmittal.** Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the Directors and resubmit the Application within thirty (30) days of the denial, and the Directors shall grant Administrative Approval or deny the revised Application within thirty (30) days of receipt of it. The subsequent review by the Directors shall be limited to the deficiencies cited in the original denial.

(iii) **Denial of Encroachment Permits.** The Public Works Director may deny any Application for Encroachment Permit to the extent it is determined that due to insufficient capacity, safety, reliability, or engineering concerns, existing infrastructure is not adequate to support the proposed installation; or the installation or modifications will unduly interfere with other uses of the Rights-of-Way, or require construction that will be unduly disruptive; or which may not meet the requirements of Article V, Section 17-141 of the Code of Ordinances, or any other rules and regulations of the City regarding the use of its Rights-of-Ways. The Public Works Director may condition the grant of any Encroachment Permit upon any conditions deemed necessary. No Application for Small Wireless Facility shall be approved if the Application for Encroachment Permit is denied.

(iv) **Appeals.** Appeals of any Administrative Reviews under this Ordinance shall be heard and decided by the Zoning Board of Appeals pursuant to Article VII, Section 7-6 of the Code of Ordinances. Any decision adverse to the Applicant must be appealed to the Zoning Board of Appeals within ten (10) business days after the issuance of the decision, and in each case where there is a claim by the Applicant

that the denial of the Application will prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S. Code Section 253(a) – Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7) – Mobile Services, as further set forth in the Small Wireless Facility Order and the FCC Final Rules. The Board of Zoning Appeals shall hear and determine the appeal applying the standards set forth in this Ordinance, and those standards set forth in the Small Wireless Facility Order and the FCC Final Rules to determine if the denial of an Application results in an effective prohibition of service. To the extent that an Applicant makes a claim that any preliminary denial will result in an effective prohibition within the meaning of 47 U.S. Code Section 253(a) or 47 U.S. Code Section 332(c)(7), such claim must be supported by testimony and presented by Persons with the requisite knowledge, credentials and qualifications to make and establish such facts to prove the claim. The Zoning Board of Appeals shall hear and decide upon any such appeal within those timeframes set forth in Section 11-4 herein, unless all interested parties enter into a Tolling Agreement, as defined in Section 11-4(a)(iii).

(c) **Review of Eligible Facilities Requests.** Notwithstanding any other provisions of this Ordinance, the Directors shall grant Administrative Approval 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). Any approval shall be operative, and any permit issued under this subsection shall remain in effect only so long as federal law, 47 U.S.C. 1455, and the FCC regulations established under 47 CFR 1.40001 require the approval of an Eligible Facilities Request as defined therein. By approval, the City solely intends to comply with a requirement of federal law and not to grant any property right or interests except as compelled by federal law.

(d) **Compensation.** Every Administrative Approval of an Application shall include as a condition the Applicant's agreement to pay such lawful business license taxes, administrative Fees and consent Fees as are permitted under applicable South Carolina and federal law. The Applicant shall also pay all applicable ad valorem taxes, service fees, sales taxes, or other taxes and Fees as may now or hereafter be lawfully imposed on other businesses within the City.

Section 11-5. *Requirements for Small Wireless Facilities in Covered Areas.*

(a) **Administrative Review.** The Zoning Director shall perform an Administrative Review of all Applications for Small Wireless Facilities, and the Public Works Director shall perform an Administrative Review of Applications for Encroachment Permits; and the Directors in their applicable roles shall review any of such Applications which request approval of the location of or the installation, of a new, modified, or replacement Utility Pole, Wireless Support Structure or Decorative Pole, as well as the Collocation of a Small Wireless Facility and any Accessory Equipment on Utility Poles, Wireless Support Structures, or Decorative Poles. Review factors, in addition to the information required to be filed with the Applications as set forth in Section 11-3(d) herein, shall include the size, shape, color, texture, and materials of the structures and attachments. The Directors shall also consider the following additional review factors in approving or denying any Application.

(i) **Design Requirements.** The Directors may require a proposed Small Wireless Facility, Utility Pole, Wireless Support Structure or Decorative Pole to 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 Poles, utility structures, and equipment located within five hundred (500') linear feet within the same Covered Area as the proposed Small Wireless Facility, Utility Pole, Wireless Support Structure or Decorative Pole. It shall be the responsibility of the Applicant to provide visual evidence and surveys as part of the Application demonstrating the visibility, height, type, and characteristics of

the existing Utility Poles, utility structures, and equipment located within five hundred (500') linear feet of the proposed installation of the Small Wireless Facility, Utility Pole, Wireless Support Structure or Decorative Pole. Any Facilities placed in the Covered Areas, including the Small Wireless Facility, Utility Pole, Wireless Support Structure, Decorative Pole, and all Accessory Equipment must be consistent with the overall design and character of the surrounding area, and the corridor in which it is to be placed, including, but not limited to, all publicly available planned corridor improvements.

(ii) **Sizing**. Any equipment installed as part of a Small Wireless Facility and Accessory Equipment shall be minimized so that the Small Wireless Facility and any Accessory Equipment is as unobtrusive as technically feasible.

(iii) **Concealment Requirements**. Where Small Wireless Facilities, new or replacement Utility Poles, Wireless Support Structures or Decorative Poles are determined to be appropriate, the use of reasonable stealth and Concealment Elements, low profile equipment and control boxes, and screening may be required to avoid negative impacts on the character and visual aesthetics of the surrounding area or the corridor. Antennas associated with a Small Wireless Facility which are placed on a Utility Pole, Wireless Support Structure or Decorative Pole should be colored to match or complement the color of the Utility Pole, Wireless Support Structure or Decorative Pole and mounted in an as unobtrusive manner as technically feasible and incorporate Concealment Elements. Antennas should be placed in a shroud at the top of the Utility Pole if the owner of the Utility Pole permits it, and the shroud shall meet the volumetric limitations of a Small Wireless Facility. When the antenna cannot be placed at the top of the Utility Pole, it may be placed in the communications space on a cross-arm parallel to and consistent with the placement of cross-arms on Utility Poles in the same Covered Area and with Antennas and cross-arms sized and mounted to minimize their obtrusiveness. However, such requirements may be waived by the Directors upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or Concealment Elements.

(iv) **Accessory Equipment**. Accessory Equipment to the extent permitted to be attached to the Utility Pole, Wireless Support Structure or Decorative Pole shall be mounted or placed in an as unobtrusive manner as technically feasible and incorporate Concealment Elements.

(v) **Maximum Height of Antennas**.

(A) Subject to the more restrictive requirements set forth in this Ordinance, including those Covered Areas located in existing or future Underground Districts, Historic Districts, or Design Districts, the height of an Antenna of a Collocated Small Wireless Facility shall be limited to the greater of ten (10') feet above (1) the height of an existing or modified Utility Pole, Wireless Support Structure or Decorative Pole; or (2) the height of a new or modified Utility Pole, Wireless Support Structure or Decorative Pole as provided in (B) below.

(B) Subject to the more restrictive requirements set forth in this Ordinance, including those Covered Areas located in existing or future Underground Districts, Historic Districts, or Design Districts, the height of a new or modified Utility Pole, Wireless Support Structure, or Decorative Pole is limited to the greater of (a) the tallest Utility Pole, excluding Transmission Poles, 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, Wireless Support Structure or Decorative Pole, not to exceed fifty (50') feet; or (b) in the absence of any such Utility Pole, Wireless Support Structure or Decorative Pole, either (i) forty (40') feet in an 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. It shall be the responsibility of the Applicant to provide visual evidence and surveys as part of the Application demonstrating the type and height of any existing Utility Pole, excluding Transmission Poles, located in the same Covered Area located within five hundred (500') linear feet of the proposed installation of the Small Wireless Facility.

(vi) **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 Areas in existing and future Underground Districts. Where Small Wireless Facilities have been permitted under this Ordinance in a Covered Area and the City enacts future nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground structures in the Covered Areas in the new Underground District, all Small Wireless Facilities and Utility Poles, Wireless Support Structures and Decorative Poles permitted under this Ordinance shall be removed from the Covered Areas or placed underground at the expense of the Permittee, unless otherwise directed by the City. Nothing in this Section 11-5 shall prohibit the use or modification or replacement of existing Utility Poles in Underground Districts for the Collocation of Small Wireless Facilities with appropriate design and Concealment Elements, subject to Administrative Review by the Directors. Notwithstanding, to the extent that there are no existing Utility Poles, Wireless Support Structures and Decorative Poles in the Covered Areas that are available for modification or replacement, to the extent an Applicant can demonstrate that the undergrounding requirement will prohibit or have the effect of prohibiting it from providing personal wireless services within the meaning of 47 U.S. Code Section 253(a) – Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7) – Mobile Services, as further set forth in the Small Wireless Facility Order and the FCC Final Rules, the Applicant may file an Application to construct a new Decorative Pole, using Concealment Elements features that are suitable and in general conformity with other above-ground structures in the surrounding Covered Areas.

(vii) **Historic and Design Districts.** As a condition for Administrative Approval of new Utility Pole in a Historic or Design District, the Zoning Director may require that the Applicant complies 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 the Design District. If design and Concealment Elements are determined on review by the Zoning Director to be insufficient to mitigate harm to the Historic District or Design District, the Application for a Small Wireless Facility may be denied.

(viii) **Design Districts.** Collocated Small Wireless Facilities and new or modified Utility Poles, Wireless Support Structures and Decorative Poles located in Design Districts listed in **Appendix B** may be subject to a higher level of review.

(xi) **Design Guidelines.** The Directors have the authority to implement future design requirements for Small Wireless Facilities and supporting structures as technology evolves and the nature of the installation of the Small Wireless Facilities evolve. In order to provide guidance to Applicants concerning the design of Facilities which comply with this Ordinance, the Directors shall maintain and publish on the City's website a catalog of the site-specific designs that have been approved by the City, it being recognized that the same design as those set forth in the catalog should in most instances be deemed appropriate for a comparable location. Any Person may request the Directors to review any new design for installation in specific Covered Areas, and if approved, to add the design to the catalog.

(b) **Preservation of Authority.** This Section 11-5 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.

(c) **Existing Design Districts.** Design Districts approved by the City as of the effective date of this Ordinance are listed in **Appendix B** attached hereto. The Code of Ordinances provisions authorizing the district are specified in Appendix B. Nothing in this Ordinance shall prohibit or otherwise limit the City from establishing additional Design Districts; provided however, Facilities for which a permit was approved pursuant to this Ordinance prior to the establishment of the additional Design Districts shall remain subject to the provisions of this Ordinance, including routine maintenance of those Facilities and structures as set out in Section 11-3(e)(i) of this Ordinance, but not to any provisions otherwise applicable to the additional Design District. If a Permittee voluntarily replaces such Facilities in a manner that does not comply with Section 11-3(e) of this Ordinance, or if a Permittee voluntarily relocates such Facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the additional Design District.

Section 11-6. *Effect of Permit/Additional Requirements.*

(a) **Authority Granted: No Property Right or Other Interest Created.** A permit from the City authorizes an Applicant or Permittee to undertake only certain activities in accordance with the Ordinance. Nothing in this Ordinance or any permit issued shall be deemed to grant, convey, create or vest in the Permittee a property right, real property interest, or grant any authority whatsoever to the Applicant or Permittee 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 Directors 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 Small 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.

(c) **Obligations of Permittee and Wireless Service Provider.** An Applicant or Permittee need not own all components of a Small Wireless Facility placed in the Covered Areas and may permit its Wireless Service Provider customers who will transmit or receive radiofrequency emissions from the Small Wireless Facility to maintain ownership of certain components of the Small Wireless Facility or to provide Wireless Services through the Small Wireless Facility. However, (i) the Small Wireless Facility must be wholly under the control and management of the Permittee; and the Permittee shall be liable for all acts or omissions, and all harms associated with the Small Wireless Facility and all its components whether the same is its acts or omissions, or the acts or omissions of the owner of any components of the Small Wireless Facility or provider of Wireless Services through the Small Wireless Facility; and (ii) the Permittee acknowledges and agrees that no rights of ownership by its customers shall permit any such customer to enter upon, or use the Covered Areas, in any other manner or at any other place, including to add to, or modify or install any equipment at a Small Wireless Facility location, which shall be the Permittee's sole responsibility. Further, the Permittee may not install any equipment it does not own at a Small Wireless Facility location, unless the Person for on whose behalf the equipment has been installed acknowledges and agrees, in a form acceptable to the City Attorney, that the City has not granted it a franchise or consent to be in the Covered Areas for any purpose; that it is bound by the Permittee's representations; that it shall have no rights or claims against the City of any sort related to the Small Wireless Facility; that its operations in the Public Rights-of-Way and its equipment may be subject to taxes, fees or assessments as provided by applicable

laws, and that the City may treat any equipment owned by such Person as if it were owned by the Permittee for all purposes (including, but not limited to, removal and relocation). The acknowledgment and agreement may be provided for all Small Wireless Facilities within the City, and need not be provided separately, location by location.

- (d) **No Waiver of Other Permits and Authorizations.** All work upon the Public Rights-of-Way of the City shall be in accordance with all applicable standards, Applicable Codes, and the City Code of Ordinances, and will be done under the general supervision of the Department of Public Works or their designees. Nothing in this Ordinance or any permit issued to an Applicant shall be construed as: (i) a waiver of any laws, regulations or rules of the City or of the City's right to require the Applicant to secure the appropriate permits or authorizations, or to pay the applicable fees associated with the same; or (ii) a waiver of the City's police powers.
- (e) **Applicant's Expense.** All costs incurred by an Applicant or Permittee in connection with its compliance with, or enjoyment of, this Ordinance or any permit issued shall be borne by the Applicant or Permittee and not by the City, and all work that must be performed in order to permit the placement of a Small Wireless Facility at a particular location shall be paid for by the Applicant or Permittee.
- (f) **Relation to Attachment Rights and Placement of Facilities Outside the Covered Areas.** This Ordinance and any permit issued hereunder does not confer upon any Applicant or Permittee any right to place or Collocate or to install anything on land or structures located outside of the Covered Areas that are owned by the State, any County, the City or by a third party. In addition to the requirements of this Ordinance, the Applicant is required to obtain and is responsible for any authorizations that may be required from the owners of any structure or private property for the installation, operation or maintenance of any Small Wireless Facility.
- (g) **Treatment of Equipment Owned by Other Entities.** If Wireless Service Providers own or operate equipment or provide Wireless Services at a permitted Small Wireless Facility located in the Public Rights-of-Way, as contemplated by Section 11-6(c) above, each Wireless Service Provider shall also be required to pay to the City the consent fee each year as required by S.C. Code Ann. Section 58-9-2230. The purpose of this provision is to ensure that Wireless Service Providers who use Small Wireless Facilities constructed and owned by Wireless Infrastructure Providers are not favored over those who do not. The owner, operator or Permittee shall be obligated to pay such consent fee or any other tax, Fee or assessment for any such equipment owned or operated by third parties unless that party agrees to pay such amounts owed directly to the City.
- (h) **Radiofrequency Emissions.** Without limiting the other provisions of this Ordinance, any Person operating a Small Wireless Facility must cease its operations if it is not in compliance with FCC regulations governing radiofrequency emissions (including but not limited to any standards that may be adopted in the future with respect to cumulative multi-point emissions), as the same may be amended from time to time, except to the extent that the FCC or other order, ruling or regulation permits it to continue to operate. The approval of an Application for a Small Wireless Facility or an Application for Encroachment Permit is not intended to insulate the Permittee from any claim or any remedy based on radiofrequency emissions. On request, or to the extent that any Permittee is aware of any non-conformance, it shall submit a report identifying applicable standards, measured emissions, and any area where it has Small Wireless Facilities that do not comply with applicable standards. The

report will not be treated as confidential. To the extent required as a condition of approval by the owner of the Utility Pole, Wireless Support Structure or Decorative Pole any Permittee shall be required to post any required radiofrequency emission warnings mandated by the owner of any Utility Pole, Wireless Support Structure or Decorative Pole. The design of the warning shall be demonstrated in the Applications.

Section 11-7. Work in the Public Rights-of-Way.

(a) **No Interference.** No Right-of-Way or another public place shall be obstructed longer than necessary during its work of construction or maintenance and shall be restored to the same condition existing before the commencement of the work. No part of any Right-of-Way, or another public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or another public improvement, shall be damaged. However, should any such damage occur, the Permittee shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from any responsible party, including, but not limited to, any owner, operator or Permittee concerning the project, any Person performing the work, or any third-party, including any Wireless Service Provider on whose behalf the work will allow it to provide Wireless Services. In no event may Wireless Facilities be constructed or maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with applicable law protecting persons with disabilities.

(b) **Multiple Applications.** If City receives multiple Applications for placement of other or additional Small Wireless Facilities similar to those authorized under this Ordinance at or near the same location, the City, after providing all affected entities an opportunity for comment, may require consolidation of certain existing and new Small Wireless Facilities into a single structure or develop a non-discriminatory means of allocating locations that may be appropriate for placement of Small Wireless Facilities in the Rights-of-Way, with the goal of preventing the proliferation of Utility Poles, Wireless Support Structures and Decorative Poles in the Covered Areas.

(c) **Closing of Rights-of-Way.** Nothing in this Ordinance, any approved Application, or any Encroachment Permit shall be construed as a waiver or release of the rights of the City in and to the Rights-of-Way. In the event that all or part of the Rights-of-Way within the Covered Areas are (1) closed to pedestrian and/or vehicular traffic and/or utilities; or (2) vacated or abandoned or if ownership of the land in, under or over the affected Rights-of-Way is otherwise transferred to another Person, all rights and privileges granted pursuant to this Ordinance, any approved Application, or any Encroachment Permit with respect to such Rights-of-Way, or any part of such Rights-of-Way so abandoned, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and the owner, operator or Permittee for any Facilities shall remove its Facilities from such Rights-of-Way. Nothing herein is meant to preclude the owner, operator or Permittee from pursuing any rights it may have under state law against a private Person if the Right-of-Way is vacated for the benefit of that Person. The City shall provide reasonable prior written notice to the owner, operator or Permittee of Facilities of any such closing, vacation, or transfer to allow it to remove its Facilities.

(d) **All Work Performed Safely.** Construction and maintenance shall be done in a professional manner. All work involved in the construction and maintenance of the Wireless Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The owner, operator or Permittee shall comply with Applicable Codes and industry standards, as amended from time to time. The owner, operator or Permittee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. Also, the owner, operator or Permittee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work

sites and to comply with safety requirements of all permits, licenses, and other forms of approval or authorization. The owner, operator or Permittee will comply with City requirements for identification of the Wireless Facilities and for identification of employees, subcontractors, vehicles and equipment when performing work within the Rights-of-Way.

(e) **Maintenance.**

(i) **Standard.** The owner, operator or Permittee shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with all Applicable Codes, applicable laws, permits, authorizations or site licenses issued by the owner of the Utility Poles, Wireless Support Structures and Decorative Poles.

(ii) **Repair of Damage.** A Permittee shall repair all damage to a City Right-of-Way directly caused by the activities of the Permittee and any third party utilizing the Small Wireless Facility, while occupying, installing, repairing, or maintaining the Small Wireless Facility, Wireless Support Structures, Decorative Poles, City Owned Poles, or Utility Poles, and to return the Right-of-Way to its functional equivalence before the damage. If the Permittee fails to make the repairs required by the City within forty-five (45) days after written notice, unless the Director and the Permittee agree in writing to a longer period, the City may undertake those repairs and charge the Permittee reasonable and documented cost of the repairs.

(iii) **Payment of Costs.** Any costs charged by the City to the Permittee under any provision of this Ordinance shall be paid within thirty (30) days. The City may maintain an action to recover the costs of the repairs, including the payment of reasonable attorneys' fees, if not timely paid.

(iv) **Condition/Failure to Act.** The owner, operator or Permittee shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives the owner, operator or Permittee written notice of a failure by the owner, operator or Permittee to maintain the Facilities, the owner, operator or Permittee shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice. If the owner, operator or Permittee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the owner, operator or Permittee.

(v) **Graffiti.** The owner, operator or Permittee shall at all times keep and maintain the Facilities free of all graffiti located thereon. If City notifies the owner, operator or Permittee that graffiti is located on the Facilities, the owner, operator or Permittee shall remove the graffiti within thirty (30) days of the written notice. If the owner, operator or Permittee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the owner, operator or Permittee.

(f) **Emergency Notification.** The owner, operator or Permittee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the owner, operator or Permittee, not voice mail or a recording, can be contacted in the event of an emergency. An emergency contact number of the owner, operator or Permittee and any or any Wireless Service Provider transmitting radiofrequency signals from the Small Wireless Facility will also be placed on the Wireless

Facility. The owner, operator or Permittee or any Wireless Service Provider shall respond immediately to address a reported emergency.

(g) **Excavation Notices.** The owner, operator or Permittee must be a member of the South Carolina 811 or successor association and comply with the requirements for excavation notification.

(i) **Inspection by City.** The City shall have commercially reasonable access to inspect any work conducted by the owner, operator or Permittee during the construction or maintenance of the Facilities.

Section 11-8. Indemnification and Insurance.

(a) **Indemnification.** Any Permittee, as a condition of the approval of any Application under this Ordinance, agrees to indemnify, defend, protect, and hold harmless the City, its elected officials, council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Claims") directly or proximately resulting from the activities or operations of the Permittee's or any Wireless Service Provider providing Wireless Services at any permitted location undertaken pursuant to any approved Application.

(b) **Waiver of Claims.** Any Permittee, or any Wireless Service Provider providing Wireless Services at the permitted location, as a condition of the approval of any Application under this Ordinance, waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Permittee or Wireless Service Provider equipment or any loss or degradation of the Wireless Services provided by Permittee or any Wireless Service Provider providing Wireless Services at any permitted location in the Covered Areas as a result of any event or occurrence regardless of the cause.

(c) **Insurance.** Any Permittee, as a condition of the approval of any Application under this Ordinance, shall obtain and maintain at all times during the duration of that period of time that it operates in the Covered Areas pursuant to such approved Application commercial general liability and property liability insurance with a combined single limit of not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and for damage or destruction to property in any one occurrence; (ii) workers' compensation coverage in the statutory amount; (iii) employers' liability occupational disease and bodily injury, limit of \$1,000,000.00; (iv) automobile liability for owned and non-owned autos, combined single limit of \$1,000,000.00; and (v) all risk property insurance with standard extended coverage, replacement value, without co-insurance factor for full replacement value of the Permittee's Facilities and personal property located in the Covered Areas. The limits required above may be satisfied through the combination of primary and excess liability insurance policies. The Permittee shall require its contractors and subcontractors to carry workers' compensation insurance and adequate liability insurance in conformity with the minimum requirements listed above. Failure of the Permittee to obtain or maintain the required insurance or to provide the certificates of insurance with endorsements required by subsection (d) below shall be grounds for the City to revoke any rights previously granted to the Permittee under this Ordinance. Prior to the revocation of any rights, the City shall give the Permittee thirty (30) days notice to cure the deficiency.

The commercial general liability insurance and automobile liability insurance policies shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of the Permittee's occupancy in, and around, the Covered Areas pursuant to any approved Application. The commercial general liability and automobile liability insurance coverage shall be in an

occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance coverages shall not be canceled nor, shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. The Permittee shall be responsible for notifying the City of such change or cancellation.

(d) **Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to any approved Application, and annually on the anniversary of the approved Application thereafter, the Permittee and all parties acting for or on behalf of the Permittee shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following: the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; and that the City shall receive thirty (30) days' prior notice of cancellation; that the Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and that the Permittee's commercial general liability insurance policy waives any right of recovery the insurance company may have against the City. The certificate(s) of insurance with endorsements and notices shall initially be filed with the Application, and future certificate(s) of insurance with endorsements shall be mailed to the City at the following address: Zoning Administrator, 2500 City Hall Lane, North Charleston, South Carolina 29406. Neither a failure to provide the required certificate(s) of insurance nor submission of a certificate(s) of insurance not in conformance with the insurance requirements stated herein shall relieve the Permittee from the obligation to have in force the required insurance coverages. The insurance requirements stated herein may only be changed by specific written agreement by the City.

(e) **Insurer Criteria.** Any insurance provider of the Permittee shall be admitted and authorized to do business in the State of South Carolina and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A: VII."

(f) **Severability of Interest.** Any insurance policy deductibles or self-insured retentions shall be the responsibility of the Permittee. The City shall have no responsibility to pay or reimburse either. Any self-insured retention shall be listed on the certificate of insurance and be subject to approval by the City.

(g) **Changes in Insurance.** The types and amounts of insurance required of a Permittee under this Ordinance assume that no hazardous materials will be associated with any of any improvements in the Covered Areas and that any improvements in the Covered Areas will be of a kind and type regularly installed in the Rights-of-Way. The City may require additional types of insurance or increase in insurance coverage limits if, in the City's reasonable view, the improvements made by any Permittee present additional risks to the City, the public or property.

Section 11-9. *Removal, Relocation or Modification of a Small Wireless Facility in the ROW.*

(a) **Notice.** Within ninety (90) days following written notice from the City, a Permittee, 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 Facilities within the Rights-of-Way whenever the City, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary (i) for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the Rights-of-Way; (ii) to ensure that any Facilities or structures to which they are attached or

located on or within do not interfere with the use of the Rights-of-Way by the public, or present a risk to public health or safety; (iii) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Rights-of-Way; or (iv) if Permittee's licenses to operate the Facilities and/or provide Wireless Services are terminated, revoked, expired, or otherwise abandoned.

(b) **Emergency Removal or Relocation of Facilities.** The City retains the right to cut or move any Facilities located within its Rights-of-Way as the City, 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 City shall notify the Permittee and provide it the opportunity to move its Facilities before the City cutting or removing any Facilities and the City shall notify the Permittee after cutting or removing the Facilities.

(c) **Undergrounding.** If an owner, operator or Permittee for Facilities are located aboveground in the Rights-of-Way and the distribution lines of the incumbent local exchange carrier or electric utility subsequently are placed underground, the owner, operator or Permittee's aboveground Facilities (other than those comparable to any facilities of the incumbent local exchange carrier which are permitted to remain aboveground) shall be placed underground at the same time, except for such modified or replacement Utility Poles or Decorative Poles as may be permitted to remain aboveground pursuant to Section 11-5.

(d) **Preservation of City's Rights.** The rights and privileges granted in this Ordinance, any approved application, or any Encroachment Permit shall not be in preference or hindrance to the right of the City, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. In the event that the Facilities interfere in any way with the construction, maintenance or repair of such public works, public improvements, or public projects, the owner, operator or Permittee for the Facilities shall (i) immediately commence work to remove or relocate the object of such interference if emergency circumstances exist or (ii) otherwise, within ninety (90) days of notice of such interference, protect or relocate its Facilities, as may be directed by the relevant authority.

(e) **Cooperation for Relocation.** The City shall cooperate with the owner, operator or Permittee for a Facility in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section 11-9 in a manner that, to the extent reasonably consistent with other provisions of this Ordinance, and which allows the Permittee or its Wireless Service Provider customers to continue to provide Wireless Services, including, but not limited to, expediting approval of any necessary permits required for the relocation of the Facility.

(f) **Payment for Repair/Replacement of Damaged Property.** To the extent that any Utility Pole, Wireless Support Structure, or Decorative Pole is damaged or destroyed by a third party, notwithstanding any agreement the City may have with the owner of such Utility Pole, Wireless Support Structure, or Decorative Pole, to the extent that a Permittee is using such Utility Pole, Wireless Support Structure, or Decorative Pole for the placement of a Small Wireless Facility, the City shall have no obligation to pay for the repair or replacement of the Utility Pole, Wireless Support Structure, or Decorative Pole.

(g) **Abandonment of Facilities.** Upon abandonment or discontinuance of use of any Facilities within the City Rights-of-Way, the Permittee shall remove the Facilities within thirty (30) days.

(h) **Abandonment by Inaction.** At any point when a Permittee fails to pay any required Fee or annual payment to the City, and fails to respond within thirty (30) days to a written inquiry from the City as to whether the Permittee intends to continue to operate a Facility, for whatever reason, the

Facilities shall be deemed abandoned and the City may require the owner, operator or Permittee, at the City's sole discretion, to remove the Facilities within thirty (30) days.

(i) **Failure to Act.** If the owner, operator or Permittee for a Facility defaults in its obligations hereunder to remove the Facilities, the City may remove or relocate the Facilities and charge the reasonable cost thereof to and collect the same from the owner, operator or Permittee for the removed Facilities. The City shall also be entitled to recover any reasonable legal fees it may incur in enforcing the provisions of this Ordinance from the Permittee.

Section 11-10. Attachment to City-Owned Poles in the Covered Areas.

(a) **Rate.** To the extent the City consents to the use of any City-Owned Pole in a Covered Area for the placement of a Small Wireless Facility, the rate charged to the Applicant to place a Small Wireless Facility on a City-Owned Pole in Covered Areas shall be set from time to time by the City in amounts consistent with those benchmarks set forth in the Small Wireless Facility Order and Final FCC Rules. Nothing in this Section 11-10 or this Ordinance shall obligate the City to make available any City-Owned Pole for use by any Person for the placement of a Small Wireless Facility in the Covered Areas.

(b) **Attachment Agreement.** The City shall also require the Applicant to enter into an attachment agreement to further define the terms and conditions of attachments to City-Owned Poles.

(c) **Make-Ready.** For City-Owned Poles in Covered Areas, to the extent the City consents to the use of any City-Owned Pole, the Applicant shall pay for any expenses for make-ready work and any and all other costs the City may incur as a result of allowing the use of the City-Owned Pole. The Applicant shall perform any required tests or cause to be prepared any reports necessary to determine the amount of the make-ready work necessary to enable the City-Owned Pole to support the requested Small Wireless Facility, including replacement costs of a new structure if necessary.

Section 11-11. Miscellaneous.

(a) **Severability.** In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word 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.

(b) **Conflict with Other Laws.** Whenever the regulations of this Ordinance conflict with the requirements of any state or federal statute on the same subject matter, including, but not limited to the Small Wireless Facility Order and FCC Final Rules, the applicable federal statute or Small Wireless Facility Order and FCC Final Rules shall govern.

(c) **No Additional Costs to the City.** Whenever this Ordinance specifies colocation, the replacement of an existing structure, or any other action (besides governmental approvals), all such action shall be taken at the sole expense of the Applicant.

(d) **Materials and Claims.** All materials furnished for any work done in the Covered Areas by any Permittee shall be at the Permittee's sole cost and expense. The Permittee agrees to protect all permitted improvements installed in the Covered Areas and property of the City, and City, from all claims of contractors, laborers, and materialmen. The Permittee shall promptly pay all contractors and

materialmen, so as to minimize the possibility of a lien attaching to any property of the City or the permitted improvements in the Covered Areas. Should any such lien be made or filed, the Permittee shall cause the same to be discharged and released of record by bond or otherwise within fifteen (15) days after written request by City.

(e) **No Advertisement.** A Permittee shall not place any advertisement or other notice on or about the permitted improvements which identifies the Permittee in any way (except for emergency notification postings).

(f) **Non-Waiver.** Failure of City to insist on strict performance of any of the conditions, covenants, terms or provisions of any approved Application or this Ordinance or to exercise any of its rights hereunder shall not waive such rights, but the City shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized, either in law or equity.

(g) **Preservation of Authority.** This Ordinance and any approved Application under this Ordinance is subject to the Constitution and laws of the State of South Carolina, 47 U.S. Code Section 253, 47 U.S. Code Section 332(c)(7), the Small Wireless Facility Order and the FCC Final Rules (collectively the **"Applicable Laws"**). In conforming this Ordinance to the requirements of S.C. Code Ann. Section 58-9-2200 et. seq. as enacted by the General Assembly of South Carolina in 1999, and the Applicable Laws, the City does not concede or imply that the General Assembly has the authority to restrict by general law the powers denied to the General Assembly and reserved to the municipalities of South Carolina by Article VIII Section 15 of the Constitution of South Carolina, or that the United States Congress or the FCC has the authority to restrict by general law or rules and regulations protection provided to it under 47 U.S.C. Section 332(c)(7)(A) regarding its authority over decisions regarding the placement, construction, and modification of personal wireless service facilities as those terms are defined therein, or that protection provided to it under 47 U.S. Code Section 253(c) to manage the public Rights-of-Way, or to require fair and reasonable compensation for the use of the public Rights-Of-Way.

Section 11-12. *Effective Date.*

This Ordinance shall take effect thirty (30) days after adoption.

APPENDIX B

Existing Design Districts.

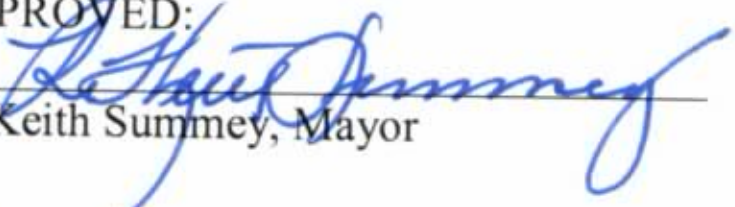
Design Districts approved by the City as of the effective date of this Ordinance are listed below.

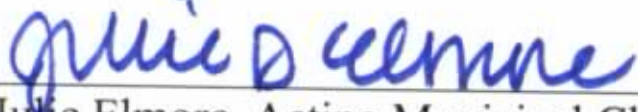
1. Appendix A, Zoning Regulations, Article V. Section 5-8. AR-I, Ashley River Scenic District I.
2. Appendix A, Zoning Regulations, Article V. Section 5-9. AR-II, Ashley River Scenic District II.
3. Appendix A, Zoning Regulations, Article V. Section 5-10. AR-III, Ashley River Scenic District III.
4. Appendix A, Zoning Regulations, Article V. Section 5-11. Dorchester Road Corridor I District.
5. Appendix A, Zoning Regulations, Article V. Section 5-12. Dorchester Road Corridor II District.
6. Appendix A, Zoning Regulations, Article V. Section 5-13. Ladson Road Overlay District.
7. Appendix A, Zoning Regulations, Article V. Section 5-14. University Boulevard Overlay District.
8. Appendix A, Zoning Regulations, Article V. Section 5-16. Old Village Business Overlay District.
9. Appendix A, Zoning Regulations, Article X. Olde North Charleston Historic District and Neighborhood Conservation District.

PASSED: June 27, 2019

ATTEST: _____

APPROVED:


R. Keith Summey, Mayor


June Elmore, Acting Municipal Clerk

APPROVED AS TO LEGAL FORM:


City Attorney

PROPOSED ZONING ORDINANCE TEXT AMENDMENT

TITLE:

An Ordinance To Establish The Standards
For The Placement Of Small Wireless Facilities In
Covered Areas In The City Of North Charleston,
South Carolina; And For Other Purposes.



North Charleston a great place to live, work, and play

Section 11-2. 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 City.
- (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, Utility 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 existing 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.
- (c) It is the intent of this Ordinance to ensure the continued compliance with the existing Code of Ordinances, as well as applicable Federal Statutes and the Rules and Regulations of the FCC, including, but not limited to:
 - (i) The provisions of Article V, Section 17-141, of this Ordinance regarding the **"Use of Streets by Utilities,"** as amended, shall continue to apply to the use of the Covered Areas as defined herein.
 - (ii) The provisions of Article V, Public Rights-of-Way Consent, Section 10.5-147 of the Code of Ordinances titled **"Public Rights-of-Way Consent Fee for Telecommunications Companies Using City-Owned or Controlled Streets to Provide Telecommunications Services"** shall apply to any Application for Small Wireless Facility or Application for Encroachment Permit under this Ordinance;
 - (iii) The provisions of Article III, Telecommunications and Cable Code, Section 10.5-50.1 of the Code of Ordinances titled **"Business License Tax on Retail Telecommunications Services"** shall apply to any Wireless Infrastructure Provider or Wireless Services Provider providing retail telecommunications services in the City;
 - (iv) To ensure compliance with 47 U.S. Code Section 253 – Removal of Barriers to Entry; 47 U.S. Code Section 332(c)(7) – Mobile Services; Federal Communications Commission Declaratory Ruling and Report and Third Order released September 27, 2018 (the **"Small Wireless Facility Order"**) and the Federal Communications Commission Final Rules attached to the Small Wireless Facility Order as Appendix A, both as may be amended in the future (the **"FCC Final Rules"**).

STAFF RECOMMENDATION: APPROVAL

PLANNING COMMISSION RECOMMENDATION: APPROVAL

**NORTH CHARLESTON CITY COUNCIL
AGENDA ITEM**

Meeting of June 27, 2019

DATE: June 24, 2019

ITEM TITLE: An Ordinance To Establish The Standards For The Placement Of Small Wireless Facilities In Covered Areas In The City Of North Charleston, South Carolina; And For Other Purposes.

SUBMITTED BY: Derk Van Raalte, Legal Department 843-740-2550

CONTACT PERSON: Derk Van Raalte, 843-740-2550
Gary Pennington, Telecommunications Counsel

SUMMARY EXPLANATION:

Telecommunications technology and national regulatory standards evolve frequently. The City's existing telecom ordinance dates back years and deals primarily with early generation wireless communications. Since then, cellular data usage has increased exponentially, data transfer speed expectations have increased exponentially, and the number of wireless devices in use has increased exponentially. At the same time, use patterns have shifted from interstate highway (early network focus) to heavy residential and urban core use. In response providers have rolled out a number of technological solutions. Federal regulators have passed supporting regulatory schemes that local governments must accommodate. Small cell wireless facilities have become mainstream and the City is beginning to see the first of a wave of facilities. The City's prior telecom code did not address such technology since, at the time it was drafted, it did not exist.

The attached ordinance would establish a comprehensive scheme for the permitting of small cell equipment in the public rights of way. Under federal law the City does not have an option to refuse access. The City also has comparatively little discretion to regulate (for instance, we cannot insert siting requirements inconsistent with technological needs or impose requirements that would effectively thwart rapid deployment of a 5G network) since the federal government has already chosen a clear path. Experienced telecommunications counsel worked closely with staff to prepare the attached ordinance allowing the City to exert the maximum amount of local control while remaining consistent with federal regulatory obligations.

The ordinance does not permit towers to be located in the public rights of way. Staff is also working to present a revised and updated ordinance governing new communications towers.

STAFF RECOMMENDATION:

Staff recommends approval.

BOARD, COMMISSION, COMMITTEE RECOMMENDATIONS:

On May 13, 2019, the Planning Commission held a public hearing and voted unanimously to recommend approval of the zoning text amendment (6-0-0).

COUNCIL COMMITTEE RECOMMENDATION:

On June 20, 2019 the Public Safety Committee voted unanimously to recommend approval of the Ordinance as presented (9-0-0).

COUNCIL ACTION:

On June 13, the City Council held a first reading and referred this item to the Public Safety Committee for further review and a recommendation.

Exhibits
___ Resolution X ___ Ordinance ___ Contract ___ Minutes ___ Plan/Map ___ Transfer of Funds ___ Other