

CHAPTER 1181 - PERSONAL WIRELESS SERVICE FACILITIES

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SUBCHAPTER 1181a - TOWERS AND WIRELESS COMMUNICATIONS FACILITIES

1181a.01 - PURPOSE AND INTENT.

- (A) The purpose of Subchapter 1181a is to regulate the placement, construction, and modification of towers and wireless communications facilities to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of a competitive personal wireless communications marketplace in the City and provision of reliable personal wireless service.
- (B) The City's intent is to encourage wireless communications service providers that seek to further the following City priorities:
 - (1) Co-locate with other existing wireless communications facilities or locate on existing structures;
 - (2) Minimize adverse visual impacts of wireless communications facilities by locating in the least obtrusive locations and manner using present and evolving technology;
 - (3) Ensure the proposed wireless communications facilities are designed in harmony with residential, commercial, and adjacent natural settings in a manner consistent with current development patterns;
 - (4) Ensure access to reliable personal wireless communications services throughout all areas within the City;
 - (5) Minimize adverse health, safety, public welfare, and visual impacts through colocation, siting, design, and construction, while upholding the purposes and objectives of this chapter.

1181a.02 - OBJECTIVES.

- (A) The following are the City's objectives regarding wireless communication regulations:
 - (1) To comply with the Telecommunications Act of 1996, as amended, and any subsequent rules and/or rule interpretations, by appropriate state and federal agencies and/or courts having jurisdiction in the City.
 - (2) To work proactively with wireless communications providers to ensure rapid and reliable deployment of their services or technologies, while minimizing negative effects on the City.
 - (3) To ensure that the location of wireless communications facilities in the City provide reliable wireless communication coverage consistent with these objectives.
 - (4) To allow, under certain conditions and terms approved by the Mayor and City Council, appropriate City-owned property, and structures to be used for wireless communications facilities.
 - (5) To minimize adverse visual impacts of wireless communications facilities through careful design, siting, landscaping, and innovative camouflaging techniques.
 - (6) To promote and encourage shared use/colocation of wireless communication facilities as a primary option rather than construction of new single-use towers.
 - (7) To ensure wireless communications facilities are soundly and carefully designed, constructed, modified, and maintained, and removed when no longer in use.
 - (8) To ensure to the maximum extent practicable that towers and wireless communications facilities are compatible with surrounding and nearby land uses.
 - (9) To ensure to the maximum extent practicable that proposed wireless communications facilities are placed in locations that are designed to preserve adjacent natural settings and, in a manner, consistent with existing and planned development patterns.
 - (10) To ensure that decisions on requests for authorization to place, construct, or modify wireless communications facilities for personal wireless service are made within a reasonable time after

the request is duly filed with the City, taking into account the nature and scope of the request, and that such decisions are supported by substantial evidence contained in a written record.

1181a.03 - APPLICABILITY.

- (A) All wireless communications facilities, any portions of which are located within the City, are subject to Subchapter 1181a, unless such facilities are small cell facilities, as defined by Subchapter 1181b, located in City right-of-way, in which case Subchapter 1181b shall apply. In the case of conflict with other provisions of the Code, with the exception of Subchapter 1181b, the provisions of Subchapter 1181a shall control. Wireless communications facilities shall be regulated and permitted pursuant to Subchapter 1181a and shall not be interpreted, regulated, or permitted as essential services, public utilities, or private utilities.
- (B) Except as provided in this chapter, any approved use of a nonconforming wireless communication facility on the effective date of this chapter shall be allowed to continue, even if in conflict with the terms of this chapter, but shall not be expanded, reconstructed, or modified unless in conformance with this chapter, as required in Section 1181a.09.
- (C) Subchapter 1181a and the various sections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, section, clause, or word is adjudged unconstitutional or invalid for any reason, by any court of competent jurisdiction, the invalidity shall not affect the remaining portions or applications of this chapter which shall be given effect without the invalid portion or application, provided those remaining portions are not determined by the court to be invalid.

1181a.04 - DEFINITIONS.

(A) *General use of terms.*

- (1) The terms, phrases, words, and their derivations used in Subchapter 1181a shall have the meanings given in this section.
- (2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.
- (3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.
- (4) The words "shall" and "will" are mandatory and "may" is permissive.
- (5) Words not defined shall be given their common and ordinary meaning.

(B) *Defined terms.* The definitions provided in this division (B) shall apply for purposes of Subchapter 1181a:

ADMINISTRATIVE REVIEW TEAM or **ART.** Members of City staff listed in Section 1181a.06 or their designated representatives, and others appointed by the Mayor as deemed necessary.

ANTENNA. Any transmitting or receiving device used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals, or other communication signals.

APPLICANT. Any person that applies for administrative review, conditional use review, plan approval, or other permit or approval according to the requirements of Sections 1181a.01 through 1181a.13.

APPLICATION. The materials and process by which an applicant submits a request as authorized by the property owner and indicates a desire to be granted approval of an antenna, tower, antenna support structure, or any other wireless communications facility under the provisions of Sections 1181a.01 through 1181a.13. An application includes all written

documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the City concerning the request, but shall not include materials submitted as part of a request for non-binding pre-application review.

BACKHAUL NETWORK. The infrastructure that connects a provider's wireless communications facility sites to one or more cellular telephone switching offices, and/or long-distance providers, or public switched telephone network.

BOARD OF ZONING AND BUILDING APPEALS OR BZBA. The Board of Zoning and Building Appeals for the City, as created by the Gahanna City Charter.

CABLE MICROCELL NETWORK or CMN. A wireless telecommunications facility characterized by small antennas and equipment cabinets, and typically located on a small diameter monopole; on an existing or replacement streetlight, power pole, sign, or other suitable structure; or on an existing building.

CELLULAR-ON-WHEELS or COW. A temporary mobile wireless communications facility that consists of a wireless antenna tower and associated equipment on a truck, trailer, or other mobile structure designed to be part of a wireless network.

CHIEF BUILDING OFFICIAL. The Chief Building Official of the City of Gahanna.

CITY. The City of Gahanna, Ohio.

CITY ENGINEER. The City Engineer of the City of Gahanna.

CODE. The Code of Ordinances of the City of Gahanna.

COLOCATION. The use of, or ability to use, a wireless communications facility by more than one wireless communications provider or more than one wireless antenna array.

CONDITIONAL USE. A use allowed in a zoning district after approval of the Planning Commission according to the provisions of Section 1181a.07 of this Code of Ordinances.

COUNCIL. The City Council of the City.

DIRECTOR. [For Subchapter 1181a the City Planner or a designee. For Subchapter 1181b the Director of Public Service or a designee.](#)

DISTRIBUTED ANTENNA SYSTEM or DAS. A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure which also may or may not contain fiber optic transport and/or landline components.

DISTRICT or ZONING DISTRICT OR ZONE DISTRICT. A portion of the City within which certain uses of land and/or buildings are permitted and under the regulations and requirements of Part Eleven – Planning and Zoning Code of the City of Gahanna of this Code of Ordinances.

ELIGIBLE FACILITIES REQUEST. Any request for modification of an existing wireless communications facility that does not substantially change the physical dimensions for such wireless communications facility, involving (a) colocation of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment. A modification is a "substantial change" in the physical dimensions of the wireless communications facility if it meets the criteria in 47 C.F.R. 1.6100(b)(7).

EMERGENCY. A reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action, mitigation, or abatement.

ENGINEER. Any engineer currently licensed by the State of Ohio.

EQUIPMENT SHELTER or EQUIPMENT CABINET. The structure in which the electronic receiving and relay equipment or other necessary equipment for a wireless communications facility is located.

FAA. The U.S. Federal Aviation Administration, and any legally appointed, designated, or elected agent or successor.

FCC. The U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

HEIGHT or ABOVE GROUND LEVEL or AGL. When referring to a tower or other structure, the distance measured from the finished grade at the base of the tower or structure to the highest point on the tower or structure, including the base pad and any antenna, but not including lightning arrest devices.

MONOPOLE. A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

MULTI-USE TOWER. A self-supporting, or monopole structure constructed from grade which supports more than one wireless communications facility.

NONCONFORMING TOWER. Any tower or antenna lawfully existing at the effective date of or amendment to Subchapter 1181a which does not currently conform to the requirements of Subchapter 1181a.

PERSON. Any individual, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for-profit.

PLANNING COMMISSION or PC. The Planning Commission for the City, as created by the City Charter.

RECONSTRUCTED TOWER. A tower which is removed in whole or in part and replaced in whole or in part. For the purposes of Subchapter 1181a, a reconstructed tower is a tower for which approvals have been granted in accordance with the provisions of Subchapter 1181a. The term and its use shall not apply to nonconforming towers.

RECORD OF DETERMINATION. The official written record of action by the Administrative Review Team.

SMALL WIRELESS FACILITIES. For purposes of this Subchapter 1181a does not include small cell facilities located in the City right-of-way governed by Subchapter 1181b.

As defined in 47 CFR 1.6002(l), facilities that:

- (1) Are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR § 1.1320(d); or are mounted on structures no more than 10 percent taller than other adjacent structures; or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 CFR § 1.1320(d)), is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under part 17 of Chapter I, Title 47, Code of Federal Regulations;
- (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

STEALTH. Describes a wireless communications facility designed to appear as another natural or artificial object that exists in the surrounding environment or which is architecturally integrated into a building or other structure, designed to be minimally obtrusive and to camouflage or conceal the presence of the wireless communications facility, including but not limited to structures designed to have the appearance of clock towers, bell steeples, and similar alternative-design mounting structures or other structures intended to camouflage or conceal.

SUPPORT STRUCTURE. Any building or structure other than a tower, i.e., not designed and constructed primarily for purposes of supporting antennas or related facilities, which can be used for the location of wireless communications facilities

TEMPORARY WIRELESS COMMUNICATIONS FACILITIES. A cellular-on-wheels unit; an antenna on a bucket truck, crane, crank-up tower, tower; or another wireless communications facility required to evaluate a site for a temporary placement of a wireless communications facility as permitted by Subchapter 1181a or for providing communications during an emergency, special event, conference, or other situations for limited periods while the use of a permanent wireless communication facility is temporarily interrupted or overwhelmed.

TOWER. Any structure designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar communication purposes, including self-supporting, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, wireless communications towers, and the like. The term includes the structure and any necessary supports.

WIRELESS COMMUNICATIONS FACILITIES or WCF. Includes, but shall not be limited to, towers, poles, cables, wires, lines, wave guides, antennas, microwave dishes, and/or any other equipment or facilities associated with the transmission or reception of communications as regulated by the FCC (or other unregulated wireless communication facility). The term shall not include:

- (1) Any satellite earth station antenna two meters or less in diameter or diagonal measurement located in a non-residential district;
- (2) Any satellite earth station antenna one meter or less in diameter or diagonal measurement that is designed to receive direct broadband satellite service, including direct-to-home satellite services, or to receive or transmit fixed wireless signals via satellite regardless of zoning category;
- (3) Any antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming service via broadband video services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite;
- (4) Any antenna that is designed to receive local television broadcast signals and does not use a mast higher than 12 feet above the tallest point of the roof of the tallest principal or accessory structure, excluding chimneys, cupolas, or other architectural elements;
- (5) Antennas used by amateur radio operators; or
- (6) Towers, structures, antennas, or other equipment used for the purposes of operating a public safety voice or data radio network or an outdoor early warning system within the City limits. This includes directional and omnidirectional antenna equipment, as well as microwave and point-to-point equipment.

1181a.05 - GENERAL REQUIREMENTS.

- (A) Wireless communications facilities, where permitted, shall be subject to administrative review or conditional use review in the zoning districts specified in this Code of Ordinances, contingent upon meeting the requirements of this chapter and other applicable ordinances of the City.

(B) The following tables summarize the City's zoning districts and approval procedures applicable to the facilities regulated by this Subchapter 1181a.

(1) Administrative review: See § 1181a.06.

(2) Conditional use review: See § 1181a.07.

Residential Zoning Districts	Approval Procedures (Not applicable to Eligible Facilities Requests)			
	Colocation (Stealth)	New Tower (non-Stealth) or Co-Location (non-Stealth)	New Tower (Stealth)	Temporary Facilities
Estate Residential ER-1 & ER-2 Single-Family Residential SF-1, SF-2 & SF-3 R-4 Residence Two-Family Residential Planned Unit Residential Planned Residential District Olde Gahanna OG-1, OG-2 Multi-Family Residential	Administrative	Not Permitted	Conditional Use	See 1181a.10

Commercial and Mixed-Use Zoning Districts – See Next Page

Commercial and Mixed-Use Zoning Districts	Approval Procedures (Not applicable to Eligible Facilities Requests)			
	Colocation (Stealth)	New Tower (non-Stealth) or Co-Location (non-Stealth)	New Tower (Stealth)	Temporary Facilities
Planned Commercial Center				
Office, Commerce, Technology				
Select Commercial Planned District				
Community Service				
Suburban Office and Institutional				
Neighborhood Commercial				
Community Commercial				
Community Commercial Modified	Administrative	Conditional Use	Administrative ¹	See 1181a.10
Neighborhood Commercial Mixed Use				
Planned Corporate Mixed-Use District				
Planned Industrial Park Districts				
Planned Industrial Development				
Planned Residential Commercial Mixed-Use District				
Olde Gahanna OG-3				

¹If the Director determines that the essential criterion of being “Stealth” has not been met, the application for administrative review shall not be approved. The applicant may submit an application for conditional use review by the Planning Commission. (See § 1181a.07)

Other Zoning Districts	Approval Procedures (Not applicable to Eligible Facilities Requests)			
	Colocation (Stealth)	New Tower (non-Stealth) or Co-Location (non-Stealth)	New Tower (Stealth)	Temporary Facilities
Restricted Institutional	Administrative	Conditional Use	Administrative ¹	See 1181a.10

¹ If the Director determines that the essential criterion of being “Stealth” has not been met, the application for administrative review shall not be approved. The applicant may submit an application for conditional use review by the Planning Commission. (See § 1181a.07)

(C) General requirements. The following requirements shall apply to all wireless communications facilities in any zoning district, except those governed by Subchapter 1181b. These requirements shall be in addition to the regulations of the specific zoning districts in § 1181a.05(B).

(1) Application. The following information must be submitted for all applications required by this Subchapter 1181a unless deemed unnecessary by the Director. An application is not considered complete until all materials required by this chapter have been submitted and accepted by the City in accordance with this chapter. If an application is determined to be incomplete, the Director shall promptly notify the applicant of the information necessary to complete the application. The Director or the ART may request additional information if deemed reasonably relevant to the consideration of the application.

- (a) Completed application form and application fee.
- (b) A scaled and dimensioned site plan (not less than one-inch equals 50 feet) clearly indicating the following:
 1. Location, type, and height of the proposed wireless communications facility;
 2. The existing or proposed lease area and parcel boundaries for the site;
 3. On-site land uses and zoning, and adjacent land uses and zoning (including land in other municipalities);
 4. Adjacent roadways and rights-of-way;
 5. Any buildings within 100 feet of the property boundaries;
 6. Proposed means of pedestrian and/or vehicular access as applicable to the type of facility;

7. The setback distance between the proposed wireless communications facility, equipment shelters and/or cabinets, and the nearest property line;
 8. Elevation drawings of the proposed wireless communications facilities, including material specifications for all associated site improvements; and
 9. Any other proposed improvements, including but not limited to structures, grading, tree removals and replacement, topography, parking, and other information necessary to determine compliance with Subchapter 1181a.
- (c) Legal description and/or property survey of the parent tract and leased parcel (if applicable).
 - (d) For all new towers, the separation distance from other existing and planned wireless communications facilities shall be shown on a map and shall include latitudinal and longitudinal location coordinates. There must be a written description of how the proposed facility fits into the Applicant's telecommunications network. The applicant shall also identify the type of construction of the existing wireless communications facilities and the owner/operators of the existing facilities, if known.
 - (e) A landscape plan showing proposed landscape materials and quantities, locations, installation sizes, and other information necessary to determine compliance with the landscape requirements of [Chapter 1181a.05\(C\)\(4\)\(b\)](#).
 - (f) Location and method of screening structures, if any, including height, material, style, and color; and, if applicable, the method of camouflage and illumination. Specification sheets shall be required for all prefabricated site elements.
 - (g) A statement of compliance with the requirements of this chapter and all applicable federal, state or local laws, including those of the FCC and FAA that certifies that Applicant agrees to bring Tower and Equipment Shelters into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the Tower and Equipment Shelter within 120 days of the effective date of the regulations.
 - (h) Twenty-four hour emergency contact information and contact information for the entities providing the backhaul network for the wireless communications facilities described in the application and other wireless communications sites owned or operated by the applicant in the municipality. Contact information for the tower owner, operator, and emergency contact shall be kept current and on file with the City at all times.
 - (i) For all new towers, a statement by the applicant and/or a structural analysis sealed by an engineer affirming that the construction of the wireless communications facility will accommodate colocation of additional antennas for future users as applicable.
 - (j) For all new towers, a statement from an engineer of the ability or inability to use existing towers, other structures, or alternative technology not requiring the use of towers or structures, to provide the services planned for the use of the proposed wireless communications facility.
 - (k) For all new towers, an inventory of existing and approved towers within the jurisdiction or within two miles of the border of the City, with latitudinal and longitudinal location coordinates. The City may share this information with other applicants under this chapter or other organizations seeking to locate towers or antennas within the jurisdiction of Gahanna or other communities. However, the City is not, by sharing this information, in any way representing or warranting that the sites are available or suitable. The inventory of each tower and antenna shall include:
 1. A map showing each location, by address and/or parcel identification number, including straight-line distances between each facility;
 2. Facility height and design;
 3. Facility owner(s)/operator(s); and

4. Colocation capability of each facility, including alternative tower structures and antenna support structures.

(2) *Application procedures.*

- (a) Applications for all wireless communications facilities, except for those subject to Subchapter 1181b, shall be submitted in accordance with §§ 1181a.05 through 1181a.07, as applicable.
- (b) The applicant shall pay a non-refundable fee as established by the City.
- (c) When practicable, application for approval of multiple towers and/or antenna sites by a single owner of towers and antennas shall be submitted as a single application or multiple applications submitted at the same time.
- (d) *Public property.* Approval by the Mayor shall be required for any applications involving structures to be located on property owned by the City, except for those subject to Subchapter 1181b.

(3) *Wireless communications facility support structures.* Wireless communications facilities subject to this Subchapter 1181a shall meet the following requirements:

- (a) *Design.* All new towers shall be designed to have stealth characteristics and shall be further designed to accommodate at least two wireless communication arrays of antennas or panels, unless the requirement is waived by the reviewing body for good cause shown, which may include technical or physical impracticability. The applicant shall submit an affidavit by an engineer licensed in the State of Ohio attesting that these requirements are met.
- (b) *Color and finish.* Wireless communications facilities, including supporting electrical and mechanical equipment, shall either maintain a non-contrasting gray or similar color or have a galvanized steel finish that is stealth in nature, unless the stealth elements of the design or any applicable standards of the FAA and/or the Ohio Department of Transportation necessitate use of a different color or finish or as may be approved by Planning Commission. to establish a stealth appearance and be aesthetically and architecturally compatible with the surrounding environment.
- (c) *Compatible design.* The design of equipment shelters, cabinets, and related structures for the wireless communications facility shall use materials, colors, textures, and screening so as to be aesthetically and architecturally compatible with the surrounding environment, as approved by the reviewing body and stealth in nature.
- (d) *Antenna color.* If an antenna is installed on a support structure other than a tower, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to, or closely compatible with, the color of the support structure so as to make the antenna and related equipment as visually unobtrusive as practicable, as determined by the reviewing body to be stealth in nature.
- (e) *Lighting.* Facilities shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting fixtures and installation must cause the least disturbance to views from surrounding properties. Stealth wireless communications facilities may be lighted if determined by the reviewing body to be necessary to establish a stealth appearance and to be aesthetically and architecturally compatible with the surrounding environment.
- (f) *Maximum height.* Wireless communications facilities subject to this Subchapter 1181a shall meet the following height requirements:
 1. In residential zoning districts up to 80 feet. In no case shall a wireless communications facility, including antenna, exceed 80 feet, as measured from grade at the base of the tower.

2. In Restricted Institutional Districts, up to 100 feet, provided that the facility is designed to be co-locatable for more than one additional carrier. In no case shall a wireless communications facility, including antenna, exceed 100 feet, as measured from grade at the base of the tower.
 3. In all other zoning districts, up to 120 feet, provided that the facility is designed to be co-locatable for more than one additional carrier. In no case shall a wireless communications facility, including antenna, exceed 120 feet, as measured from grade at the base of the tower, unless the applicant establishes to the reviewing body that conditions present in the vicinity require a taller structure in order to prevent or remedy a significant gap in reliable personal wireless service coverage.
 4. For wireless communications facilities locating on a support structure, antenna shall not extend more than 20 feet above the highest point of the main roof deck or parapet or supporting structure if the antenna is located on a structure other than a roofed building.
 5. Unless otherwise required herein, stealth towers may exceed 120 feet if determined by the reviewing body to be necessary to establish a stealth or camouflaged appearance that is aesthetically and architecturally compatible with the surrounding environment.
 6. As an exception to division (C)(3)(f)I-5 of this section, users locating on a City water tank are exempt from the height requirements of this chapter, but facilities shall be no taller than functionally necessary to prevent or remedy a significant gap in reliable personal wireless coverage.
 7. Unless otherwise specified, height exceeding the provisions of 1181a.05(C)(3)(f)I-5 of this section shall require conditional use review under the provisions of § 1181a.07.
- (g) *Colocation.* Unless physically or technically infeasible, all wireless communications facilities shall be constructed or reconstructed to accommodate two or more users or arrays.
1. In connection with any application for plan approval, in order to encourage colocation, an existing tower meeting colocation requirements that is lower than the height permitted above may be reconstructed to meet the maximum heights permitted after receiving approval from the reviewing body.
 2. A wireless communications facility which is being rebuilt to accommodate the location of additional antennas may be relocated on the same site, after receiving approval from the reviewing body, provided it meets the setback requirements of this chapter.
 3. Colocation requirements may be waived if the reviewing body determines that the fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs that would exceed new tower development are an example of what may be determined to be unreasonable. Satisfactory and substantial information must be submitted by the applicant demonstrating that the costs are unreasonable.
- (4) *Site requirements.* Wireless Communications Facilities subject to this Subchapter 1181a and associated site improvements shall be sited and developed in accordance with the following requirements:
- (a) *Setback and siting requirements.*
1. The setback requirements shall be met for all elements of the wireless communications facility, supporting structure, and equipment.
 2. Proposed towers located within Restricted Institutional Districts must provide a minimum setback of 300 feet for all elements of the wireless communications facility, from the property lines of properties zoned residential as set forth in section 1181a.05(B).
 3. For all remaining zoning districts, a minimum setback of the height of the proposed tower in feet from all property lines, and principal structures shall apply to new towers

unless a greater setback for principal structures is required by the zoning district in which the tower is to be located. In determining the required setbacks and lot area, the entire site, including all lots or parcels used for the tower, supporting structures, and equipment, shall be considered, even though the antennas or towers may be located on leased portions within the prescribed lot area.

4. Refer to division (C)(5) of this section for regulations pertaining to the siting of equipment associated with wireless communications facilities.
 - (b) *Screening.* Screening shall comply with applicable requirements of Part Eleven of the City Code. Fencing or other materials used for screening of wireless communications facilities or associated equipment shall be at least one foot higher than the structure(s) it is intended to screen, but shall not exceed 12 feet. For stealth wireless communications facilities, the reviewing body may approve screening installations deviating from requirements in Part Eleven provided that such deviations are necessary to effectuate the facility's stealth characteristics.
 - (c) *Landscaping.* Buffer plantings shall be located on the site to screen adjacent properties and the base of the wireless communications facility and associated equipment from adjacent properties and rights-of-way in accordance with the landscape requirements of this chapter and Part Eleven of the City Code. For stealth wireless telecommunications facilities, the reviewing body may approve landscaping installations deviating from requirements in Part Eleven provided that such deviations are necessary to effectuate the facility's stealth characteristics.
 - (d) *Sign.* One sign shall be posted in a visible location on the tower, alternative tower structure, fence, equipment shelter, or other associated equipment indicating the owner of the facility, and an emergency contact and phone number. The sign shall not exceed two square feet and shall be approved as part of the zoning approval. All other signs shall comply with the requirements of Part Eleven of this Code of Ordinances.
- (5) *Equipment shelters and cabinets.*
- (a) *Use, Design and Screening.*
 1. Accessory Equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Communication Facility. Any equipment not used in direct support of such operation shall not be stored on the site.
 2. Equipment cabinets or structures used in association with antennas shall be designed and/or painted to minimize visual impact.
 3. Evergreen plant material shall be used for screening and shall be planted to ensure that the equipment will be screened to its full height within three years of planting. For stealth wireless communication facilities, other plant materials may be approved by the reviewing body if necessary to effectuate the facility's stealth characteristics.
 4. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, the reviewing body may determine that natural growth around the property may be a sufficient buffer.
 5. At the reviewing body's determination, alternative screening materials may be used in cases where plant material is not appropriate.
 - (b) *Underground equipment shelters.* Underground equipment shelters are will be required by the reviewing body where equipment shelters are located on properties that are readily visible from adjacent streets and lots and where landscape screening or other stealth camouflaging strategies are not effective.

- (c) *Roof- and/or structure-mounted antennas.* The equipment cabinet or structure used in association with antennas shall comply with applicable building codes. Additionally, equipment shall be sited, designed, and/or painted to minimize visual impact and be screened so that it is not visible from ground level.
 - (d) *Utility or light pole-mounted antennas.* The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
 - 1. In all zoning districts, the equipment cabinet or structure shall comply with all applicable setbacks required by the zoning district in which it is located, unless located in the right-of-way.
 - 2. If the proposed antenna mounted on a utility or light pole is located within an existing City easement, the applicant shall obtain a separate easement encroachment agreement as required by the City Engineer.
 - (e) *Tower-mounted antennas.* As an exception to division (C)(5)(d) of this section, where the reviewing body determines that underground equipment shelters are not feasible due to site conditions or other considerations, equipment shelters designed using materials permitted for principal structures within the zoning district shall be provided where applicable. The unmanned equipment structure shall not exceed the maximum height for principal structures and comply with setbacks required by the zoning district in which the shelter is located.
- (6) *Code compliance and permit requirements.*
- (a) *Construction permits.* The installation of any wireless communications facility shall require compliance with all applicable federal, state, and local regulations and the securing of all applicable zoning and building permits and inspections.
 - (b) *State or federal requirements:*
 - 1. All wireless communications facilities shall meet or exceed current standards and regulations of the National Electrical Safety Code, National Electrical Code, FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas.
 - 2. If state or federal standards and regulations are amended, the owners of the wireless communications facilities governed by this Subchapter 1181a shall bring any facilities into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring wireless communications facilities into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
 - (c) *Building codes and safety standards:*
 - 1. To ensure the structural integrity of towers, the owner of a tower and/or support structure shall ensure that it is designed, constructed, and maintained in compliance with requirements contained in applicable state or local building codes and the applicable requirements for towers and antenna support structures that are published by the Electronics Industries Association, as amended from time to time.
 - 2. If, upon inspection, the City concludes that a wireless communications facility fails to comply with any applicable codes and requirements and constitutes a danger to persons or property, after written notice to the owner, the owner shall have not more than 30 days to bring the facility into compliance with those requirements. Failure to bring the facility into compliance within the required time shall be grounds for removal at the owner's expense.
 - (d) *License to operate.* Owners and/or operators of wireless communications facilities shall maintain and submit copies of all approved franchises, certifications, licenses, and permits required by law for the design, construction, location, and operation of wireless

communications facilities in Gahanna. Evidence of renewal or extensions shall be promptly provided to the Director.

- (e) *Certification.* Any information of an engineering nature required by this chapter, whether civil, mechanical, or electrical, shall be certified by a licensed engineer.

1181a.06 - ADMINISTRATIVE REVIEW.

(A) *General provisions.*

(1) Review of applications will proceed on the following timelines:

- (a) A decision within 60 days of submittal for an eligible facilities request or application to collocate a small wireless facility.
- (b) A decision within 90 days of submittal for applications for collocations that are not eligible facilities requests or applications to install a small wireless facility that is not a collocation.
- (c) A decision within 150 days of submittal for all other applications.
- (d) The City reserves the right to negotiate alternative timelines with Applicants on a case-by-case basis.
- (e) If the City notifies an Applicant within 30 days of filing that the Application is incomplete, the time taken by the Applicant to respond does not count towards the 90 and 150 day timelines and the City may restart the process.
- (f) Any denial will be in writing and based on substantial evidence contained in a written record.
- (g) The specific reasons for any denial which constitute the substantial evidence will be accompanied with the actual denial.
- (h) If a single application seeks authorization for multiple deployments, all of which are for either collocation of a small wireless facility or to install a small wireless facility that is not a collocation, then a decision will be issued on the same timeline as an application for a single deployment within that category. If a single application seeks authorization for multiple deployments, some of which are collocations of small wireless facilities and some of which are to install small wireless facilities that are not collocations, then the decision will be issued within 90 days of submittal of the application.

(2) *City's responsibilities when evaluating Applications:*

(a) The City will not:

1. Unreasonably discriminate among providers of functionally equivalent services.
2. Prohibit or have the effect of prohibiting the provisions of wireless services.
3. Prohibit or have the effect of prohibiting the ability of an entity to provide telecommunications service.
4. Regulate or deny an Application for the placement, construction, and modification of Wireless Communications Facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations governing such emissions.
5. Deny an application solely because one or more carriers serve the geographic market.

(B) *Reviewing bodies and processes.*

(1) *Director Approval of Eligible Facilities Requests*

- (a) When an applicant asserts in writing that a request is an "eligible facility request," the applicant shall submit specifications and drawings to the Director as reasonably necessary for the Director to determine that the request is in fact an eligible facility request. The applicant shall not be required to submit documentation intended to illustrate the need for the wireless telecommunication facility that is the subject of the request or to justify the business decision to modify the wireless telecommunication facility that is the subject of the request.
 - (b) If the documentation submitted to confirm the request is an eligible facility request is incomplete or insufficient to validate the claim that the application is an eligible facility request, the Director shall notify the applicant in writing of such deficiency within 30 days of receipt of the application, clearly and specifically delineating the missing documents or information necessary to make the eligible facility request determination.
 - (c) Subject to the tolling provisions for notices of deficiency set forth in 47 CFR 1.6100, or mutual written agreement between the Director and the applicant, the Director shall approve the eligible facility request within 60 days of filing of the application unless the Director determines that the request is not an eligible facility request.
 - (d) If the Director determines that a request is not an eligible facility request, the Director shall notify the Applicant of the decision and refer the matter for review as provided in Section 1181a.05.
- (2) *Administrative Review Team (ART).*
- (a) The purpose of the Administrative Review Team is to provide for review and approval authority for certain wireless communications facilities. The Administrative Review Team is responsible for the comprehensive review of each application submitted for review in accordance with this Subchapter 1181a, and making recommendations to the Planning Commission, or Board of Zoning and Building Appeals where required.
 - (b) The Administrative Review Team shall consist of the Director (Chair) or designee, and any other members appointed by the Mayor as deemed necessary, either as permanent or temporary members.
 - (c) The Administrative Review Team may use the services of other professionals, such as architectural, engineering, and other consultants as they deem necessary, to advise the ART on the application of the provisions of this Subchapter 1181a. Any fees from said services will be passed on to the Applicant.
- (3) An application for administrative review shall be made in accordance with the requirements of § 1181a.05.
- (4) *Time extensions.*
- (a) Where the provisions of this Subchapter 1181a require that an action be taken by the City within a stated period of time, that time may be extended with the written consent of both the applicant and the Director prior to expiration of the required time period.
 - (b) If the applicant submits a revised application during any required review period, and the Director determines that the revised application differs substantially from the previous application, a new review period shall begin and additional meetings of the required reviewing body may be scheduled if deemed necessary by the Director.
- (5) *Duration of approvals.* Approvals of requests for administrative review made in accordance with Subchapter 1181a shall be valid for a period of one year. If an initial building permit for the approved facility has not been issued within that one year period, the applicant shall be required to submit a new request for administrative review, as applicable, pursuant to Subchapter 1181a before obtaining a building permit.
- (6) *Resubmission.* No application for administrative review which has been denied by the required reviewing body shall be resubmitted for a period of one year from the date of the decision, unless

permitted by the Director after a demonstration by the applicant of a change of circumstances from the previous application that may reasonably result in a different decision.

(C) *Pre-application review.*

(1) *Purpose and applicability.*

- (a) A pre-application review may be scheduled prior to filing a formal application for administrative review. Pre-application review is optional and not required. The pre-application review is not part of the formal application review process or the required review period. The purpose of the pre-application review is to provide non-binding feedback to applicants to assist in expediting the administrative review process. Any materials submitted to the City for the purposes of the pre-application review shall become part of the public record.
- (b) Pre-application reviews do not result in a development decision or permit, and shall not obligate the City or the applicant to take any action on the proposal.

(2) *Pre-application review procedure.*

- (a) A request for a pre-application review shall be made in accordance with the provisions of this division (C). As an exception to the application requirements listed in § 1181 a.05(C)(1), potential applicants may submit conceptual information based on the amount of information known about the project at the time a request for pre-application review is made. The request shall include, at a minimum, two 24x36 hardcopies and one digital of the following information:
 - 1. A general description of the proposal including a description of conformance to Subchapter 1181a;
 - 2. A site plan generally demonstrating the nature of the proposed wireless communications facility and associated site improvements;
 - 3. Conceptual facility elevations; and
 - 4. Any other materials for which the potential applicant would like to receive feedback.
- (b) The City shall notify the applicant of the meeting in writing or email at least 5 days prior to the pre-application review.
- (c) The Administrative Review Team and other applicable departments shall be promptly notified of the Administrative Review Team pre-application review. Prior to the meeting the Director shall distribute the submitted materials to the Administrative Review Team and other applicable City departments for input and recommendations.
- (d) The Administrative Review Team shall review the submitted materials and provide non-binding input and recommendations to the applicant. The ART shall complete its review of the application not more than 14 days from the date the request was submitted.
- (e) A written summary of comments and suggestions made during the pre-application review shall be provided to the applicant within a reasonable period of time after the pre-application review.

(D) *Administrative review.*

(1) *Purpose and applicability.*

- (a) The purpose of the administrative review is to ensure that wireless communications facilities meet the applicable requirements of this Subchapter 1181a.
- (b) Administrative review is required for all new wireless facilities, colocations, and all modifications to existing facilities as required by § 1181a.05, except for eligible facilities

requests. Cable microcell networks and distributed antenna systems shall also be subject to administrative review.

- (c) Temporary wireless facilities shall meet all application and approval requirements of § 1181a.10.
- (2) *Administrative review considerations.* The Administrative Review Team shall render a decision on an application for administrative review based on the following considerations:
- (a) Antennas locating on an existing building or other support may be approved as a use accessory to any commercial, industrial, professional, office, institutional, or similar structure, provided:
 - 1. The antenna is designed to be as unobtrusive as possible;
 - 2. The antenna does not extend more than 20 feet above the highest point of the main roof deck or supporting structure if the antenna is located on a structure other than a roofed building; and
 - 3. The antenna complies with the applicable provisions of § 1181a.05.
 - (b) Colocated antennas on existing or reconstructed towers may be approved provided the color and design of the antenna is consistent with the existing tower and is designed to be as unobtrusive as possible. The Administrative Review Team shall approve co-located antennas on a tower in instances where proposed colocation does not substantially change the physical dimensions of the tower and meets the requirements of Sections 1181a.01 through 1181a.13.
 - (c) Towers may be approved in accordance with the following:
 - 1. The required reviewing body may approve the location of a tower provided the site meets the purpose, objectives, and applicable requirements of this Subchapter 1181a.
 - 2. If the application is denied by the Administrative Review Team following a finding that the proposed facilities have not been reasonably disguised or camouflaged, the applicant may file an application for conditional use review in accordance with § 1181a.07.
 - (d) Cable microcell network or distributed antenna systems using multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable wires, telephone wires, utilities poles, street lights, or similar technologies/mechanisms may be approved provided that the use of towers is not required and all other applicable provisions of Subchapter 1181a have been satisfied.
- (3) *Decisions.*
- (a) Any application required by this Subchapter 1181a to be reviewed under the provisions of this section shall be approved, approved with conditions, or denied by the Administrative Review Team based on the applicable review standards as provided in this Subchapter 1181a within the timeline provided in § 1181a.06. The Administrative Review Team shall state the reasons for their decision in the written Record of Decision to the applicant not more than 10 days after a recommendation or decision is made, unless otherwise provided in Sections 1181a.01 through 1181a.13.
 - (b) Prior to reaching a decision, if the Administrative Review Team determines that an application does not meet the applicable review standards as provided in Subchapter 1181a, but determines that the application could meet those criteria with modifications that could not be reasonably conditioned, the applicant may request that the application be tabled to provide the opportunity to make those modifications provided that the applicant expressly agrees to extend the review deadline or to submit in time for a decision within the applicable deadline. If the request for tabling is granted, a new review period shall begin on the date the applicant submits a complete application with revised materials and shall be subject to the timeframe for rendering a decision as provided in division (D)(3)(a) of this section.

(c) *Approval.* An approval issued by the Director verifying compliance with all applicable zoning requirements is required prior to modification, extension, or alteration of wireless facilities that are subject to Sections 1181a.01 through 1181a.13.

(E) *Appeals.* The determination rendered by the Administrative Review Team may be appealed to the Planning Commission within 20 days of the decision by any person aggrieved by the decision. The Appeal shall be filed with the City, specifying the grounds, in conformance with Part Eleven of this Code of Ordinances.

- (1) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Director certifies to the Planning Commission, after notice of appeal has been filed, that, by reason of the facts stated in the record of determination, a stay would cause imminent peril to life or property. In this case, the proceedings shall not be stayed other than by a restraining order, which may be granted by a court of record.
- (2) In deciding the appeal, the Planning Commission shall determine, in conformance with Part Eleven of this Code of Ordinances, whether the decision was made using the proper requirements and standards of Sections 1181a.01 through 1181a.13. The decision of the Planning Commission is limited to the information that was available to the Administrative Review Team for the initial decision, including any materials included as part of the written record of the decision. Additional testimony is not appropriate.
- (3) If the Planning Commission determines that the Administrative Review Team made an improper decision the Commission may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make an order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the Administrative Review Team.
- (4) The findings of the Planning Commission shall be based on and supported by substantial evidence contained in the decision. After action by the Planning Commission on the application, the Clerk of Council shall mail to the applicant a Record of Action taken which shall contain the motion as carried by the Planning Commission to include any conditions. A final determination of the Planning Commission may be appealed to the Board of Zoning and Building Appeals. The decision of the Board of Zoning and Building Appeals shall be final.

(F) *Concurrent application review.*

- (1) Applications for building permits, electrical permits, other applicable permits, and plan approval associated with the building permit application process may be submitted with the application for administrative review and may be processed and reviewed concurrently with the administrative review application if desired by the applicant.
- (2) Review of the building permit applications and zoning approvals described in division (F)(1) of this section shall be subject to the statutory timing requirements that apply to building permit application reviews. Accordingly, the applicant should consider the nature and complexity of the request prior to submitting for concurrent review.
- (3) Requests for plan approval and building permits for wireless facilities cannot be approved for zoning compliance until an affirmative record of determination of the Administrative Review Team and all other zoning approvals are obtained and attached to the appropriate building permit documents.

1181a.07 - CONDITIONAL USE REVIEW.

(A) *Applications.* Applications for conditional use review for towers or antennas shall be reviewed by the Planning Commission, as required by § 1181a.05, subject to the procedures and requirements of Part Eleven of this Code of Ordinances, except as modified in this section.

(B) *Pre-application review.*

Commented [A1]: Who is an aggrieved party? Applicant? Property owner? Does this need to be clarified?

Commented [A2R1]: Legal review - define

- (1) *Purpose and applicability.*
 - (a) A pre-application review may be scheduled prior to filing a formal application for conditional use review. The pre-application review is optional and not part of the formal application review process or the required review period. The purpose of the pre-application review is to provide non-binding feedback to applicants to assist in expediting the conditional review process. Any materials submitted to the City for the purposes of the pre-application review shall become part of the public record.
 - (b) Pre-application reviews do not result in a development decision or permit, and shall not obligate the City or the applicant to take any action on the proposal.
- (2) *Pre-application review procedure.*
 - (a) A request for a pre-application review shall be made in accordance with the provisions of this division (B). As an exception to the application requirements listed in § 1181 a.05(C)(1), potential applicants may submit conceptual information based on the amount of information known about the project at the time a request for pre-application review is made. The request shall include, at a minimum, two 24x36 hard copies and one digital of the following information:
 1. A general description of the proposal including a description of conformance to this chapter;
 2. A site plan generally demonstrating the nature of the proposed wireless communications facility and associated site improvements;
 3. Conceptual facility elevations; and
 4. Any other materials for which the potential applicant would like to receive feedback.
 - (b) The City shall notify the applicant in writing at least 5 days prior to the pre-application review.
- (C) *Public Hearings.* Before approving or denying the application before it, the Planning Commission shall hold at least one public hearing on such application, notice of which shall include place, time, date and nature of such applied for in a newspaper of general circulation in the City during the calendar week prior to the public hearing. Written notice of said hearing shall also be mailed by ordinary mail to the street addresses of contiguous and adjacent property owners of the property for which said hearing is being held. The failure of delivery of such notice shall not invalidate any such application. The names and addresses of all property owners entitled to notice of the public hearing shall be furnished by the applicant. Where the subject of such public hearing involves 50 or more of the property owners of the City, then written notice to owners of the hearing, as provided in the preceding paragraph, shall not be required.
- (D) *Conditional use review considerations.* In addition to any standards for consideration of applications for conditional use review pursuant to Part Eleven of this Code of Ordinances, the Planning Commission shall consider the following factors in determining whether the application should be approved:
 - (1) Compliance with the requirements of this Subchapter 1181a;
 - (2) Height of the proposed tower or facility and its proximity to adjacent structures;
 - (3) Nature of the potential for adverse effects on uses on adjacent and nearby properties;
 - (4) Relationship of surrounding topography to the view from nearby properties;
 - (5) Surrounding tree coverage and foliage and the ability to screen the facilities from the view of nearby properties;
 - (6) Design of the tower or facility, with particular regard to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (7) Proposed ingress and egress for maintenance, safety, and prohibition of nuisances;

- (8) Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures, with regard to the following:
- (a) New towers shall be approved only when the applicant demonstrates that other preferable alternatives are not reasonably available to prevent or remedy a significant gap in personal wireless service. No new tower shall be permitted unless the applicant demonstrates to the reasonable.
 - (b) Evidence submitted to demonstrate that no existing tower, structure, or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:
 - 1. No existing towers or other suitable structures are located within the specific geographic limits meeting the applicant's engineering requirements.
 - 2. Existing towers or structures either do not have sufficient height to meet the applicant's engineering requirements or have insufficient structural strength to support the applicant's proposed antenna and related equipment.
 - 3. The applicant's proposed antenna would cause frequency interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - 4. The fees, costs, or contractual provisions required by the owner in order to share or to adapt for sharing an existing tower or structure, are unreasonable. Costs that would exceed new tower development is an example of what may be presumed to be unreasonable.
 - 5. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
 - 6. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a DAS or CMN using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable, but may be considered as a factor in the decision.
 - 7. The applicant provides documentation that other tower owners were contacted in writing demonstrating the above considerations.
- (E) The Director may hire an independent, qualified consultant to evaluate any technical aspects of the proposed design and location at the Applicant's sole cost.
- (F) In granting a conditional use, the Planning Commission may impose conditions to the extent necessary to minimize any adverse effect of the proposed tower or antenna support structure on adjoining properties or to meet the review considerations of this section.
- (G) The findings and decision of the Planning Commission for denials shall be based on and supported by substantial evidence contained in a written record and record of action which shall be forwarded to the applicant within 10 days following the decision. An Applicant may appeal any decision of the Planning Commission to the Board of Zoning and Building Appeals. The decision of the Board of Zoning and Building Appeals shall be final.

1181a.08 - ABANDONMENT OF WIRELESS COMMUNICATIONS FACILITIES.

- (A) *Abandonment.*

- (1) All providers utilizing wireless communications facilities shall notify the City in writing of the location and date that any tower facility located in the City whose use will be discontinued. If the use of the facility is discontinued for 180 days without notice from the owner/operator or the owner of the property, the Planning and Zoning Administrator may declare the facility to be abandoned (this excludes any dormancy period between construction and the initial use of the facility). The facility's owner/operator and property owner will receive written notice from the City and be instructed to either reactivate the facility's use within 180 days or dismantle and remove the facility.
 - (2) If reactivation or dismantling does not occur as described in division (A)(1) above, the City will either remove or cause the facility and associated structures to be removed and assess the costs to the owner/operator and property owner. In the case of a multi-use tower or wireless communications facility, this provision does not become effective until all users cease use of the tower or facility. However, the City may cause the abandoned portions of systems on the multi-use tower or facility to be removed in accordance with this provision.
- (B) Before initiating action to remove the facility, the City must provide the owner of the wireless communications facility and the property owner 90 days written notice and an opportunity to be heard before the Board of Zoning and Building Appeals to appeal the decision. After this notice has been provided, or following a determination by the Board of Zoning and Building Appeals that the tower or facility has been abandoned, the City may take whatever action that is lawful to either 1) acquire the Tower and any appurtenances attached thereto at the then fair market value, or 2) order the removal or demolition of the tower or facility and all appurtenances.
 - (C) If the removal is appealed, a public hearing in accordance with City Code will be held before the Board of Zoning and Building Appeals following the 90-day notice required in division (B) of this section. All interested parties shall be allowed an opportunity to be heard at the public hearing.
 - (D) After a public hearing is requested by the tower or wireless communications facility owner and held pursuant to division (C) of this section, the Board of Zoning and Building Appeals may recommend that the Planning and Zoning Administrator order the removal or demolition of the tower. The City may require the tower or facility owner or former owner to pay for all expenses necessary to remove or demolish the tower or facility.

1181a.09 - NONCONFORMING TOWERS OR WIRELESS COMMUNICATION FACILITIES.

- (A) *Conforming use.* Wireless communication facilities that are constructed in accordance with the provisions of Subchapter 1181a shall be deemed conforming uses or structures, regardless of their date of construction. This shall be the case even when new facilities are added to a nonconforming installation, provided that any new facilities meet the requirements of Subchapter 1181a.
- (B) *Existing towers.* Towers already in existence shall be allowed to continue their use as they exist as of the date of the adoption or amendment of Subchapter 1181a. Routine maintenance (including replacement with a new tower of like construction and height serving the same purpose) shall be permitted. A replacement tower must be constructed within 180 days of removal of the initial facility unless the owner demonstrates that meeting this requirement is not possible due to conditions not reasonably within their control. The Director may permit new construction and/or equipment replacement, other than routine maintenance on an existing tower, provided it complies with the requirements of this chapter and applicable requirements of this Code of Ordinances to the extent that existing conditions permit.
- (C) *Damaged or destroyed nonconforming wireless communications facilities.* Notwithstanding this section, nonconforming wireless communications facilities that are damaged or destroyed by actions outside the owner's control may be rebuilt without having to first obtain administrative review or a conditional use approval. Any other permits applicable to construction or reconstruction must be obtained. The type, height, and location of the wireless communications facility shall be the same as the original approved facility and constructed in accordance with currently applicable building codes. Permits for construction shall be obtained within 180 days from the date the facility is damaged or

destroyed, and reconstruction shall be started within six months from the time of damage and shall be continued until completed. If no permit for construction is obtained, or if an issued permit expires, the facility shall be deemed abandoned as specified in § 1181 a.08.

1181a.10 - TEMPORARY WIRELESS COMMUNICATIONS FACILITIES.

(A) *General.* Temporary wireless communications facilities may be approved as provided for in Subchapter 1181a to:

- (1) Allow communications providers to administer limited frequency and modulation testing to evaluate system performance and the need for additional wireless communications facility sites. Any approval shall not exceed 30 days.
- (2) Allow communications providers to supplement communications coverage when a previously permitted wireless communications facility has become involuntarily non-operational through an accident or force majeure. Any approval shall not exceed 30 days.
- (3) Address a substantial increase in the communications needs of the businesses, residents, and visitors of the City for a limited period of time in circumstances where an emergency has been declared by the local, state or federal government. The approval shall not extend beyond the time of the declared emergency.
- (4) Address a substantial increase in the communications needs of the businesses, residents, and visitors of the City for a limited period of time in circumstances when large conferences or special events are held within the City limits. The approval shall not exceed 14 days.
- (5) Allow providers to maintain uninterrupted wireless communication service through the use of temporary wireless facilities during extended periods of time due to substantial maintenance or capital projects undertaken or caused by the City. The approval shall not exceed the duration agreed to by the City and the affected wireless provider(s).
- (6) Allow providers to maintain uninterrupted wireless communication service resulting from what the Director determines to be unforeseen circumstances and/or needs for temporary alternative wireless communication facilities. The approval shall not exceed the duration agreed to by the City and the affected wireless provider(s).
- (7) The Director may permit one extension equal to the time periods permitted above, provided the extension is requested in writing prior to the expiration of the original approval period. Extensions may be granted provided the Director finds that the extension is reasonably necessary to resolve or accommodate the reasons for the original approval.

(B) *Application and approval.*

- (1) Due to the emergency nature often associated with temporary wireless facilities, authority to locate a temporary wireless communications facility in the City will be subject to the approval of the Director after review by any other members of the Administrative Review Team that the Director deems necessary following receipt of a completed application for a temporary wireless communications facility.
- (2) A temporary wireless communications facility may only be approved by the City for the limited purposes and time periods described in division (A) of this section.
- (3) Except as authorized by the Director during declared emergencies, all approved temporary wireless communications facilities shall:
 - (a) Be limited in height by the requirements of the zoning district in which the site is located. The Director may permit a greater height if the height is required for the function of the temporary wireless communications facility and no other reasonable alternative exists.
 - (b) Be set back a minimum of the height of the proposed tower from any adjoining or adjacent property line, as measured from the nearest part of the facility and/or any associated

equipment. The Director may permit a lesser setback if the location is required for the function of the temporary wireless communications facility and no other reasonable alternative location exists.

- (c) Minimize the visual impact of ground equipment to adjoining or adjacent properties.
 - (d) Provide temporary screening as may be required by the Director, such as available natural land formations, plant materials, and natural foliage to effectively screen from view as much of the temporary wireless communications facility as reasonably possible.
 - (e) Only commence installation at the approved site 48 hours before actual site use may begin.
 - (f) Be completely removed from the approved site with all site restoration finalized and returned to previously existing conditions within 48 hours following the required termination deadline or extension.
 - (g) Not use an electric, gas, or other type of generator that causes or permits any noise to emanate from it in a manner, intensity, and/or duration to create unreasonable noise or sound audible from a distance of 50 feet, and causes inconvenience and annoyance to persons of ordinary sensibilities.
 - (h) Not be illuminated unless otherwise required by the FCC or the FAA.
 - (i) Be required to comply with the applicable provisions of § 1181a.05 and all applicable federal, state, or local laws.
- (4) Applications for the location of a temporary wireless communications facility shall include the following, unless deemed unnecessary by the Director:
- (a) A statement of authorization from the owner of the real property upon which the temporary wireless communications facility is proposed to be located that authorizes the location of the temporary wireless communications facility.
 - (b) A list of all property owners and registered homeowners' associations and their addresses within 150 feet of the proposed temporary wireless communications facility site. The City may require the applicant to provide adjacent property owners with a descriptive notice of the proposed temporary wireless communications facility, site plan, and the anticipated dates of operation.
 - (c) A description of the proposed facility and all associated equipment, including structural design, proposed height, color, location, fencing and/or screening, and approximate setback from property lines.
 - (d) Typical elevations or photographs indicating the general appearance of the temporary facility.
 - (e) A site plan or aerial photo generally indicating the location and setbacks of the temporary facility.
 - (f) Any other information that the Director may deem reasonably necessary to adequately evaluate the request.

1181a.11 - INSPECTIONS.

- (A) The City requires regular inspection of Wireless Communications Facilities.
- (1) Inspections of Towers by either an Ohio Licensed Professional Engineer or a qualified third party mutually agreed upon by the applicant and the Director shall be performed to assess structural integrity. Such inspections shall be performed as follows:
 - (a) Multi-Use Towers at least once every seven years following completion of construction. The inspection shall take place between the sixth and seventh year of the repeat sequence.

- (b) Alternative Structure at least once every five years following completion of construction. The inspection shall take place between the fourth and fifth year of the repeat sequence.
 - (c) Antenna Support Structure at least once every three years following completion of construction. The inspection shall take place between the second and third year of the repeat sequence.
- (2) The inspection reports shall be made available at the City's request and shall be submitted to the Director within 30 days of receipt of the request by the Tower owner.
 - (3) The cost of such inspections, reports, repairs, or demolition required under this Section shall be borne entirely by the Tower operator. Required repairs shall be completed within 90 days or less as required by the Director for safety reasons.
 - (4) Failure to provide required inspection reports in the required time schedule shall be deemed prima facie evidence of abandonment.

1181a.12 - MISCELLANEOUS PROVISIONS.

- (A) *Non-Waiver.* Nothing in this chapter shall preclude the City from exercising any right or remedy it may have in law or equity to enforce the terms and conditions of this chapter.
- (B) *Severability.* The provisions of Subchapter 1181a are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.
- (C) *Performance Bond.*
 - (1) All Tower owners shall purchase for the benefit of the City, a performance bond to assure that the terms and conditions of this chapter are complied with, including repair and removal. The performance bond shall be in a form approved by the City Attorney and shall be in an amount no less than ten percent of the construction value of the towers as estimated by the City at the time of issuance of a building permit by the Chief Building Official.
 - (2) The City may draw upon the performance bond for recovery of any cost or damages it incurs arising from a tower owner's violation of this chapter, or the abandonment or discontinuance of use of a tower.
 - (3) The requirement to maintain a performance bond under this subsection shall cease only upon a written determination by the City that the maintenance of the bond is no longer necessary.
- (D) Should any provision of this chapter conflict with any other provision of the Code, the strictest provision shall prevail.

1181a.13 - PREEMPTION.

Notwithstanding any other provision of this Code to the contrary, an Applicant may request a waiver to excuse it from having to comply with portions of this Chapter on the ground that the requirement or action taken by the City would violate state or federal law. The City shall grant the waiver or excuse an applicant from compliance with the necessary portions of this Chapter if it finds based on substantial evidence in the record that the challenged requirement or action is preempted by state or federal law.

SUBCHAPTER 1181b - SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY

1181b.20 - PURPOSE AND INTENT.

- (A) The purpose of Subchapter 1181b is to establish general procedures and standards, consistent with all applicable federal, state, and local laws, for the siting, construction, installation, colocation, modification, operation, and removal of small cell facilities and wireless support structures in the right-of-way.
- (B) The intent of Subchapter 1181b is to:
- (1) Establish basic criteria for applications to locate small cell facilities and wireless support structures in the right-of-way and authorize the Director or his or her designee to develop, publish, and from time to time amend forms and design guidelines;
 - (2) Ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
 - (3) Preserve the character of the City by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures in City rights-of-way through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;
 - (4) Enhance the ability of wireless service providers to deploy small cell facilities and wireless support structures in the City effectively so that residents, businesses, and visitors benefit from reliable personal wireless service availability;
 - (5) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of small cell facilities and wireless support structures for such facilities in City right-of-way;
 - (6) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes; and
 - (7) Preserve the City's right-of-way as a public resource consistent with the other purposes stated herein and governing state and federal law.

1181b.21 - APPLICABILITY.

- (A) Subject to the Ohio Revised Code and approval of an application under Subchapter 1181b, an operator may collocate a small cell facility on existing wireless support structures in the City right-of-way and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City right-of-way.
- (1) An operator shall comply with generally applicable standards that are consistent with Chapter 931 and Sections 1181b.20 through 1181b.29 and any rules, regulations, and design guidelines adopted by the City for the colocation of a small cell facility and construction, maintenance,

modification, operation, or replacement of wireless support structures in, along, across, upon, and under the City right-of-way, unless otherwise prohibited by state or federal law.

(2) All wireless support structures and small cell facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the right-of-way by the City, the traveling public, or other public utilities.

(3) *Exclusions.*

(a) Amateur radio facilities. This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(b) Certain over-the-air receiving devices (OTARD). This chapter shall not govern the installation of any OTARD antennas covered under FCC regulations codified in 47 C.F.R. §§ 1.4000 et seq., as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.

(c) Handsets and user equipment. This chapter shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the right-of-way.

(B) The permitting procedures and authorizations set forth herein in Sections 1181b.20 through 1181b.29 shall apply only to small cell facilities and wireless support structures in the right-of-way, and do not authorize the construction and operation of a wireline backhaul facility, which continues to be governed by CHAPTER 931 - Comprehensive Rights-of-way Ordinance.

(C) Relationship to other chapters. This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right-of-way.

(D) Nothing in this chapter precludes the City from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure in the City right-of-way.

1181b.22 - DEFINITIONS.

(A) *General use of terms.*

(1) The terms, phrases, words, and their derivations used in Sections 1181b.20 through 1181b.29 shall have the meanings given in this section.

(2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.

(3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.

(4) The words "shall" and "will" are mandatory and "may" is permissive.

(5) Words not defined shall be given their common and ordinary meaning.

(B) *Defined terms.*

ABANDONED. Any small cell facilities or wireless support structures that are unused for a period of 365 days without the operator otherwise notifying the City and receiving the City's approval.

AFFILIATE. When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

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

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

APPLICANT. Any person that submits an application to the City to site, install, construct, collocate, modify, and/or operate a small cell facility or wireless support structure in the right-of-way according to the requirements of Sections 1181b.20 through 1181b.29.

CABLE OPERATOR. Any person or group of persons:

- (a) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or
- (b) Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

CABLE SERVICE.

- (a) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
- (b) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE FRANCHISE. An initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. 522 Section 546), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

CLEAR ZONE. The unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.

COLOCATION. The use of, or ability to use, a wireless communications facility by more than one wireless communications provider or more than one wireless antenna array.

DECORATIVE POLE. A pole, arch, or structure other than a streetlight pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

- (a) Electric lighting;
- (b) Specially designed informational or directional signage;
- (c) Temporary holiday or special event attachments.

DESIGN GUIDELINES. Those detailed design guidelines, specifications and examples promulgated by the Director for the design and installation of small cell facilities and wireless support structures, which are effective insofar as they do not conflict with federal and state law, rule, and regulations.

DIRECTOR. The Director of Public Service, or a designee.

ELIGIBLE FACILITIES REQUEST. Any request for modification of an existing wireless communications facility that does not substantially change the physical dimensions for such wireless communications facility, involving (a) collocation of new transmission equipment, (b) removal of transmission equipment, or (c) replacement of transmission equipment. A modification is a "substantial change" in the physical dimensions of the wireless communications facility if it meets the criteria in 47 C.F.R. 1.6100(b)(7).

FRANCHISE AUTHORITY. See **CABLE FRANCHISE**.

FCC. The U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

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

- (a) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C; or
- (b) A registered historic district as defined in R.C. § 149.311.

MICRO WIRELESS FACILITY. A small cell facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length suspended on cable strung between wireless support structures.

OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (OMUTCD). The uniform system of traffic control devices promulgated by the Ohio Department of Transportation.

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

OPERATOR. A wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of Sections 1181b.20 through 1181b.29, OPERATOR includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

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

PUBLIC UTILITY or UTILITY. A facilities-based provider of wireless service to one or more end users in this state, or any company described in R.C. § 4905.03 and as further defined in R.C. §

4905.02, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipelines, waterworks, and sewage disposal systems.

RIGHT-OF-WAY. The surface of and the space within, through, on, across, above, and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bike path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, and any other land dedicated or otherwise designated for the same now or hereafter held by the City. RIGHT-OF-WAY shall not include private easements or public property outside the right-of-way.

RIGHT-OF-WAY PERMIT, GENERAL. A permit issued by the City as required by Chapter 931, to persons who desire and are granted authority to utilize rights-of-way generally.

RIGHT-OF-WAY PERMIT, SMALL CELL. A permit issued by the City for the colocation, construction, maintenance, operation, or replacement of small cell facility(ies) and/or wireless support structures in, along, across, upon and under the right-of-way.

SMALL CELL FACILITY. A wireless facility that meets both of the following requirements:

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

SUBSTANTIAL CHANGE. Has the same meaning as described in 47 C.F.R. § 1.6100(b)(7).

TOLLING or TOLL PERIOD. The pausing or delaying of the running of a required time period.

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

VIDEO SERVICE PROVIDER. A person granted a video service authorization under R.C. §§ 1332.21 to 1332.34.

WIRELESS FACILITY.

- (a) Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
 - 1. Equipment associated with wireless communications;
 - 2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- (b) The term includes small cell facilities.
- (c) The term does not include any of the following:
 - 1. The structure or improvements on, under, or within which the equipment is collocated;
 - 2. Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Commented [A3]: Is a separate permit being created? Do we have a copy of this?

Commented [A4R3]: New building permit for electrical; design guidelines

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

WIRELESS SERVICE PROVIDER. A person who provides wireless service as defined herein.

WIRELESS SUPPORT STRUCTURE. A pole, streetlight pole, traffic signal pole, a 15-foot or taller sign pole, or utility pole capable of supporting small cell facilities, excluding utility poles or other facilities used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

WIRELINE BACKHAUL FACILITY. A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

1181b.23 - APPLICATION REQUIRED.

(A) *General requirements.* The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.

- (1) No person shall occupy or use the right-of-way except in accordance with law.
- (2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.
- (3) No person shall occupy or use the right-of-way without first obtaining, under this subchapter, Chapter 931 or R.C. § 1332.24 or 4939.031, any requisite consent of the City. Before placing small cell facilities or wireless support structures in the right-of-way, an operator must apply for and receive a general right-of-way permit under Chapter 931. If the operator's activities in the right-of-way will consist solely of collocating small cell facilities, constructing, modifying, or replacing new wireless support structures and associated small cell facilities, removing such facilities, or eligible facilities requests, then the operator shall not be required to pay the annual fee for general right-of-way permittees provided in Chapter 931. This provision shall not be construed to waive application fees or any other construction or work permit necessary for work in the City.

Commented [A5]: Would this include the communication wires?

Commented [A6R5]: Legal definition – is this fiber?

(B) *Pre-application conference.*

- (1) *Purpose.* Applicants are strongly encouraged to contact the City and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations and design, and the application submittal and review process, in order to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the City.
- (2) *Appointment required.* An appointment is required for all pre-application conferences. Applicants must contact the designated City staff member as noted on the application form, who will provide applicants an appointment with all applicable City representatives in a timely manner.

Commented [A7]: We need the application form to review as well.

Commented [A8R7]: Sample form

(C) *Application required.* In accordance with federal and state law and the City code, an operator may apply to the City to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon,

and under the City rights-of-way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the City rights-of-way shall first duly file a written application with the City, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the Director.

- (D) *Required application materials.* Unless otherwise required by state or federal law, all applicants shall submit to the City materials and information associated with each application as outlined in the Design Guidelines in order for the application to be considered complete.

1181b.24 - APPLICATION REVIEW TIMEFRAMES AND PROCESS.

- (A) *Permit application review timeframes.*

- (1) *Small cell facilities on existing wireless support structures.* The City shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than 60 days after the date of filing by an entity of a completed application.
- (2) *New wireless support structures and associated small cell facilities.* The City shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right-of-way not later than 90 days after the date of filing by an entity of a completed application.
- (3) *Wireless support structure and/or small cell facilities removal.* The City shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the general right-of-way permit required for this activity.
- (4) *Eligible facilities request.* The City shall approve eligible facilities requests in accordance with R.C. Chapter 4939, 47 C.F.R. § 1.6100, and this Subchapter 1181b not later than 60 days after the date of filing by an entity of a submitted application.

- (B) *Failure to grant or deny within prescribed timeframes.* If the City fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required under division (A) of this section, provided the time period is not tolled under division (D) of this section or extended with the written consent of the applicant and the Director, the request shall be deemed granted upon the requesting entity providing notice to the City that the time period for acting on the request has lapsed.

- (C) *Application denials.*

- (1) The City shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.
- (2) If a request for consent is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.

Commented [A9]: I would like some examples of what would be acceptable.

Commented [A10R9]: Legal review – reasons for denial

- (3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public Utilities Commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the City, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(D) *Tolling of required timeframes.*

- (1) The time periods required in division (A) of this section may be tolled only:
- (a) By mutual agreement between the entity requesting consent and the City;
 - (b) In cases where the City determines that the application is incomplete; or
 - (c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in division (A) of this section due to the lack of resources of the City, then the City may toll the time limits as follows:
 - 1. The time period may be tolled for up to 21 days for the first 15 small cell facility or wireless support structure requests received by the City above the thresholds provided in the table below within any consecutive 30-day period:

<i>Population of City at Time Small Cell Facility or Wireless Support Structure Applications are Received</i>	<i>Number of Applications</i>
30,001 to 40,000 persons	20 applications or more
40,001 to 50,000 persons	25 applications or more
50,001 to 60,000 persons	30 applications or more
60,001 to 100,000 persons	60 applications or more

- 2. Further, for every additional 15 requests that the City receives above the thresholds provided in the table above the City may toll the time period for those requests for up to 15 days in addition to the time period provided in division (D)(1)(c)1. of this section.
 - 3. In no instance shall the City toll the time period for any small cell facility or wireless support structure request by more than 90 consecutive days. Upon request, the City shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.
- (2) To toll the time period for incompleteness, the City shall provide written notice to the person requesting consent not later than 30 days after receiving the request, clearly and specifically

delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in R.C. § 4939.0313 or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.

- (3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the City's notice of incompleteness.
- (4) If a supplemental submission is inadequate, the City shall notify the entity not later than 10 days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (D)(1) to (D)(3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(E) *Consolidated application for multiple small cell facilities and/or wireless support structures.*

- (1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:
 - (a) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.
 - (b) The City may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.
- (2) In the case of a consolidated application, the fees provided for in R.C. § 4939.0316 and § 1181b.23 may be cumulative. However, the City, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.
- (3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under R.C. §4939.036 and division (D)(1) of this section. A request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.

(F) *Timeframe for completion of permit.*

- (1) Colocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within 180 days after issuance of the permit, unless:

- (a) The City and the operator agree to extend this period; or
- (b) A delay is caused by make-ready work for a City-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:
 1. The operator has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services; and
 2. The additional time to complete installation does not exceed 360 days after issuance of the permit.

Commented [A11]: Is this standard? A year and a half total seems like a long time.

Commented [A12R11]: Legal review – can this be adjusted

(2) If divisions (F)(1)(a) and (b) of this section cannot be met, the permit shall be void unless the City grants an extension in writing to the operator.

(G) *Small cell facility and wireless support structure activities not requiring consent.*

- (1) City consent shall not be required for either of the following activities conducted in the right-of-way:
 - (a) Routine maintenance of wireless facilities;
 - (b) The replacement of wireless facilities with wireless facilities that are consistent with the City's current design requirements and guidelines and that are either:
 1. Substantially similar to the existing wireless facilities; or
 2. The same size or smaller than the existing wireless facilities.

(2) The City may require a general right-of-way permit for any activity described in division (G)(1) of this section and for any activity for which consent is authorized herein and in accordance with state and federal law.

Commented [A13]: We will require a permit for all work in (G) (1)

Commented [A14R13]: Legal review – can work in the right-of-way including maintenance require a permit?

1181b.25 - DESIGN GUIDELINES.

- (A) The Director shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the City shall consider in reviewing an application:
 - (1) The location of any ground-mounted small cell facilities;
 - (2) The location of a small cell facility on a wireless support structure;
 - (3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;
 - (4) The design and appearance of a wireless support structure;
 - (5) The reasonable and nondiscriminatory spacing of new wireless support structures that do not have the effect of prohibiting provision of wireless service to any location; considerations for such requirements may include intersection of adjacent property lines, preservation of existing trees, proximity to driveways, and impact on adjacent residences or businesses

- (B) The Design Guidelines shall provide examples of small cell facilities preferences including visual depictions.
- (C) The provisions in this section shall not limit or prohibit the Director's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- (D) The Director shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Design Guidelines and the standards articulated in Subchapter 1181b, the language of Subchapter 1181b shall take precedence over the language of the Design Guidelines.

1181b.26 - STANDARD CONDITIONS OF PERMIT APPROVAL.

(A) *Standard conditions of approval.* Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this section. The Director or his or her designee may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.

(B) *Small cell facility permit duration.* The City's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the City, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under division (N) of this section.

Commented [A15]: So we need a registration of sorts? Do you have a registration form or tracker of this available.
Commented [A16R15]: City uses Microsoft Access today. What other software is available to track?

(C) *Compliance with all applicable laws.*

- (1) Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.
- (2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

(D) *Inspections; emergencies.* The City or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.

Commented [A17]: At not cost to the city?
Commented [A18R17]: Legal review – can City charge for inspections of sites?

(E) *Relocation or adjustment as requested by City.* If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at no cost

to the City, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.

Commented [A19]: What's the timeline?

Commented [A20R19]: Legal review

- (F) *Contact information for responsible parties.* Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Department of Service and Engineering.
- (G) *Indemnification.* Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.
- (H) *Interference with public safety radio services.* In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 CFR §§ 22.970-973 and 47 CFR §§ 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.
- (I) *Adverse physical impacts on adjacent properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse physical impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.
- (J) *Good condition required.* Small cell facilities and support structures shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, fading, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers. Notices of violation shall be served as provided in the Code. The notice shall provide that the operator has 20 days from date of service of the notice to appeal the notice or remedy it. If that time expires without appeal or remedy to the satisfaction of the City, the City may remedy the violation and charge the costs of said remedy to the operator.
- (K) *Graffiti abatement.* Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.
- (L) *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

Commented [A21]: Timeline?

Commented [A22R21]: Legal review – what is reasonable time within current law to require removal?

(M) *Relocation for public improvement projects.* Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee's sole expense to accommodate construction of a public improvement project by the City.

Commented [A23]: Timeline?

Commented [A24R23]: Legal review – what is reasonable time within current law to require relocation?

(N) *Removal of small cell facilities if use discontinued or abandoned.*

- (1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, as provided in section 1181b.24(A)(3), which shall serve as the notice required by Chapter 931 to the City of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility and/or wireless support structure shall be considered abandoned and the City may remove it at the owner's expense. Failure to remove unused or abandoned existing small cell facilities or wireless support structures may be grounds for denial of consent or approval for the operator to place other small cell facilities or wireless support structures in the right-of-way.
- (2) Small cell facilities and wireless support structures determined by the City to be abandoned without notice from the owner may be removed by the City at the owner's expense to ensure the public health, safety, and welfare.
- (3) The City reserves the right to inspect and to request information from the operator, which the operator shall provide following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right-of-way.

1181b.27 - SAFETY REQUIREMENTS.

- (A) *Prevention of failures and accidents.* Any person who owns a small cell facility and/or wireless support structure sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (B) *Compliance with fire safety and FCC regulations.* Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (C) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the City a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of Sections 1181b.20 through 1181b.29. The bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities and/or wireless support structures or damage to City property caused by an operator or its agent of each

Commented [A25]: So we keep the bond in perpetuity. I don't like funds set aside as an option. Can we remove that?

Commented [A26R25]: Legal review – what is acceptable form that provides protection to city but does not require deposit of funds in separate account?

small cell facility and/or wireless support structure in case the City has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

1181b.28 - RECOVERY OF COSTS.

- (A) *Application processing fee.* For processing an application for consent, the City may charge a fee for each small cell facility and wireless support structure requested as prescribed under R.C. § 4939.0316 and as listed on the associated application forms which shall be made available by the Department of Service and Engineering. The City may adjust this fee 10% every five years, rounded to the nearest \$5.
- (B) *Annual collocation fee.* For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the City and located in the right-of-way, the City may charge an annual fee as prescribed in R.C. § 4939.022 and as listed on associated application forms which shall be made available by the Department of Public Service and Engineering. The City may adjust this fee 10% every five years, rounded to the nearest \$5.
- (C) *Tax liabilities and assessments not applicable.* Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the City to any state or local tax liabilities or assessments.

1181b.29 - MISCELLANEOUS PROVISIONS.

- (A) *Non-Waiver.* Nothing in this chapter shall preclude the City from exercising any right or remedy it may have in law or equity to enforce the terms and conditions of this chapter.
- (B) *Severability.* The provisions of Sections 1181b.20 through 1181b.29 are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.
- (C) Should any provision of this chapter conflict with any other provision of the Code, the strictest provision shall prevail.

1181.99 - PENALTY.

- (A) Any person violating any provision of this Chapter of the Codified Ordinances shall be guilty of a misdemeanor of the third degree and shall be fined not more than \$500.00 or imprisoned not more than 60 days or both. Such person shall be deemed guilty of a separate offense for each and every day or portions thereof during which any violation of any of the provisions of this Chapter of the Codified Ordinances is committed, permitted or continued.
- (B) Nothing herein shall prevent the City from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions, and permanent injunctions, as is necessary to prevent or remedy any violations.