ORDINANCE NO. 18-46
INTRODUCED BY: Ms. Maier

First Reading May 14, 2018
Second Reading June 11, 2018

ORDINANCE
ENACTING NEW CHAPTER 907 "USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES" OF THE STREETS AND PUBLIC SERVICES CODE.

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

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

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

WHEREAS, this Council finds that enacting new Chapter 907 "Use of Public Ways For Small Cell Wireless Facilities and Wireless Support Structures" of the Streets and Public Services Code of the Codified Ordinances of the City of Bay Village promotes the public health, safety, and welfare of the City and its residents.

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

Section 1. New Chapter 907 "Use of Public Ways For Small Cell Wireless Facilities and Wireless Support Structures" of the Streets and Public Services Code, of the Codified Ordinances of the City of Bay Village is enacted to read as follows:

"CHAPTER 907
USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES

907.01 PURPOSE, DEFINITIONS AND AUTHORITY TO PROMULGATE DESIGN GUIDELINES.

(a) The purpose of this Chapter is to:

(1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City's Right-of-Way to protect the health, safety, and welfare of the citizens of the City;

(2) Preserve the character of the City, including the City's neighborhoods, downtown, and historic districts, and protect property values;

(3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically-pleasing installation of Facilities and Wireless Support Structures; and

(4) To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable state and federal laws.

(b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) "Applicant" means any person or entity who submits an Application pursuant to this Chapter.

(2) "Application" means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.

(3) "Accessory Equipment" means equipment used in conjunction with a Small Cell Facility and generally at the same location as the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.

(4) "City" means the City of Bay Village.

(5) "Collocation" or "Collocate" means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.

(6) "Design Guidelines" means the standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, set forth in Chapter 1337 of the Codified Ordinances of the City of Bay Village and promulgated by the Chief Building Official.

(7) "Eligible Facilities or Eligible Support Structure Request" means any request for modification of an existing support structure or base station that does not *substantially change* the physical dimension of such support structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:

(A) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless

Support Structure that would protrude from the edge of the Wireless Support Structure by more than six (6) feet;

(B) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than (4) cabinets, whichever is less;

(C) The installation for any new ground-mounted equipment cabinets if there are no existing ground-mounted equipment cabinets;

(D) Any excavation or deployment outside of the current site of the Facility;

(E) Removal of any concealment elements of the Facilities or the Wireless Support Structure; and

(F) Any change that does not comply with this Chapter, the Design Guidelines set forth in Chapter 909 of the Codified Ordinances, or state or federal law and regulations.

The threshold for measuring increases that may constitute a substantial change are cumulative, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the federal Spectrum Act on February 22, 2012.)

(8) "Facilities" means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.

(9) "Facilities Operator" means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:

(A) Operators;
(B) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
(C) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.

(10) "Operator" means a wireless service provider, cable operator, or video service provider that operates a Small Cell Facility and provides Wireless Service as defined in this section. For the purpose of this chapter, "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 that are fixed in nature or use unlicensed spectrum.

(11) "Public Way" or "Right-of-Way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

(12) "Small Cell Equipment" means a Small Cell Facility and all Accessory Equipment.

(13) "Small Cell Facility" means a wireless facility that meets both of the following requirements:

(A) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and

(B) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(14) "Small Cell Use Permit" means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

(15) "Substantial Modification" means a change to existing Facilities, measured from the Facilities as originally permitted, including any modifications that were reviewed and approved by the City prior to the enactment of the federal Spectrum Act on February 22, 2012, that includes one or more of the following:

(A) Increasing the height of the Wireless Support Structure by more than 10% or more than ten feet, whichever is greater;

(B) Adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the structure by more than six feet;

(C) Installing more than the standard number of new equipment cabinets for the technology involved, not to exceed four cabinets;

(D) Installation of any new equipment cabinets in the ground if there are no pre-existing ground cabinets associated with the structure, or the installation of ground cabinets that are more than 10% larger in height overall volume than other ground cabinets associated with the structure,

(E) Any excavation or deployment outside the current site.

(F) Removal of any concealment elements from the site.

(16) "Wireless Service" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

(17) "Wireless Support Structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, "Wireless Support Structure" excludes all of the following:

(A) A utility pole or other facility owned or operated by a municipal electric utility; and

(B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

(c) The Chief Building Official is authorized and directed to promulgate the City's Design Guidelines as set forth in Chapter 1337 of the Codified Ordinances of the City of Bay Village with objective, technologically feasible criteria.

907.02 CONSENT REQUIRED.

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the Chief Building Official in accordance with the requirements in this Chapter, the City's Design Guidelines, O.R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the Chief Building Official and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this Chapter, and the City's Design Guidelines. No Small Cell Use Permit shall be construed as any warranty of title.

907.03 PERMIT APPLICATION TYPES AND PROCESS.

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

(1) Type 1: Eligible Facilities Requests;

(2) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that does not constitute an Eligible Facilities Request;

(3) Type 3: New Wireless Support Structure. Such applications address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.

(4) Type 4: Removal of a Wireless Support Structure Application: Request to permanently remove an existing Wireless Support Structure.

(b) Applications are administered by the Chief Building Official pursuant to this Chapter and Section 1337 of the Codified Ordinances. The process includes:

(1) Pre-application meeting with Chief Building Official and Applicant.
(2) Applicant completes and submits the City application form and required fees.
(3) Chief Building Official reviews the Application and provides Applicant with a decision within the timeframes set forth in Section 907.08.
(4) Applicant completes installation or removal within 180 days or requests a time extension.
(5) Chief Building Official and Applicant conduct an inspection to confirm compliance with applicable local, state, and federal law. Applicant shall remedy any identified issues within 30 days.
(6) Chief Building Official and Applicant conduct a final inspection.

907.04 CONSOLIDATED CONSENT APPLICATIONS.

(a) Pursuant to O.R.C. Section 4939.0312, an Applicant may file one consolidated application for up to thirty (30) individual small cell Facilities or thirty (30) individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.

(1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.

(2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.

(3) Applications for Facilities and Wireless Support Structures cannot be commingled.

(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

907.05 APPLICATION FEE.

(a) The fee for each Application is Two Hundred Fifty Dollars ($250.00). The fee is adjusted upward by ten percent (10%) every five years, rounded to the nearest Five (5) Dollars, beginning in the year 2023.

(b) An Application shall not be deemed complete until the fee is paid.

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

907.06 ATTACHMENT FEE.

(a) In addition to the Application fee, the Facilities Operator shall pay an annual attachment fee of Two Hundred Dollars ($200.00) to the City for each Small Cell Facility attached to a municipally-owned Wireless Support Structure. The fee is adjusted upward by ten percent (10%) every five years, rounded to the nearest five (5) dollars, beginning in the year 2023.

(b) The first-year attachment fee shall be paid when the Collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the Collocation is complete.

907.07 REQUIRED APPLICATION MATERIALS.

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

(a) Completed Application form including the identity, legal status, and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be responsible for the Facilities in any way.

(b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the Application to be notified in case of emergency.

(c) Fully dimensional scaled site plan (scale no smaller than one inch equals forty (40) feet). The site plan must include:

(1) The exact proposed location of the Facilities within the Right-of-Way;

(2) All existing Facilities with all existing transmission equipment;

(3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within one hundred (100) feet surrounding the proposed Facilities.

(4) The legal property boundaries within one hundred (100) feet surrounding the proposed Facilities;

(5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within one hundred (100) feet surrounding the proposed Facilities; and

(6) Access and utility easements within one hundred (100) feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one inch equals ten (10) feet) of the proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within 300 feet of the proposed Facilities prior to submitting the Application. The notice shall include:

(1) Name of the Applicant;

(2) Estimated date Applicant intends to submit the Application;

(3) Detailed description of the proposed Facilities and the proposed location; and

(4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals forty (40) feet.

(f) A preliminary installation/construction schedule and completion date.

(g) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed Small Cell Equipment.

(h) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.

(i) A landscape plan that demonstrates screening of proposed Small Cell Equipment.

(j) Drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:

(1) The manufacturer's name and model number;

(2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and

(3) The noise level generated by the equipment, if any.

(k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by and has an agreement with an Operator who will be the end-user of the Facilities.

(l) If Applicant proposes to Collocate on privately-owned structure(s), Applicant must provide proof of owner's permission in the form of a letter or other correspondence from the owner.

907.08 APPLICATION REVIEW.

(a) Applications shall be evaluated in the timeframes as follows:

(1) Type 1 Applications 60 days

(2) Type 2 Applications 90 days

(3) Type 3 Applications 120 days

(4) Type 4 Applications 120 days

(b) Applications shall be reviewed for completeness and compliance with this Chapter, Section 1337 of the Codified Ordinances, and all applicable local, state, and federal laws. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete.

(c) The timeframes set out in subsection (a) may also be tolled as follows:

(1) If the City receives between fifteen (15) and thirty (30) applications in a thirty-day period, then the City may toll for an additional twenty-one (21) days.

(2) If the City receives more than thirty (30) applications in a thirty-day period, then the City may toll for an additional fifteen (15) days for every fifteen (15) applications received.

(3) By mutual agreement between the Applicant and the City.

(4) When an Applicant submits an underground area waiver pursuant to the Design Guidelines, in which case the City may toll for an additional thirty (30) days.

(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 907.16, then the Chief Building Official may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If an Application is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application include, but are not limited to:

(1) Failure to provide information required under Section 907.07;

(2) Failure to comply with the City's Design Guidelines;

(3) Failure to provide financial surety pursuant to Section 907.15;

(4) Failure to remove abandoned Facilities as required under Section 907.12;

(5) Conflict with the historic nature or character of the surrounding area;

(6) Conflict with planned future improvements in the Right-of-Way; and/or

(7) Failure to comply with generally applicable health, safety, and welfare requirements.

907.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of no longer than ten (10) years. Permits may be renewed for five year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term or ten (10) years or the duration of the Facilities Operator's agreement with an Operator provided pursuant to Section 907.07(k), whichever is shorter.

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.

(e) Pursuant to O.R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within 180 days of issuance of the Permit, unless the delay is caused by:

(1) Make-ready work for a municipally-owned Wireless Support Structure; or

(2) The lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within sixty (60) days after the Small Cell Use Permit was granted.

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

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within 180 days of issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 907.10, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual attachment fee was due.

(h) At any time and upon service of a sixty (60)-day advance written notice to the City, a Small Cell Use Permit may be terminated by the Facilities Operator.

(i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.

(j) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the Permit.

907.10 ANNUAL REGISTRATION.

(a) All Facilities Operators with consent to occupy or use the Right-of-Way shall register with the City each calendar year between January 1 and January 31 on a form provided by the City. The form will allow the Facilities Operator to indicate when there is no change in the information required, and when such indication is submitted, previously provided information will be considered current and will be relied upon. Facilities Operators who obtain consent to occupy the Right-of-Way after September 30 of any year need not file an Annual Registration for next calendar year.

(b) The purpose of registration under this Section is to:

(1) Compile, update and supplement the City's database so that the City has accurate and current information concerning the Facilities Operators that own or operate Facilities in the City's public Right-of-Way;

(2) Assist the City in monitoring the usage of the public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use, and the use is consistent with the best management and care of the public Right-of-Way;

(3) Assist the City in the collection and enforcement of any municipal taxes, fees, or other charges that may be due the City; and

(4) Assist the City in monitoring compliance with local, state and federal laws.

(c) Registration forms will be provided by the City and shall require the following information:

(1) Any material changes to the information the Facilities Operator provided to the City in the Application for Small Cell Use Permit including, but not limited to:

(A) The identity, legal status, and federal tax identification number of the Facilities Operator, including any affiliates or agents.

(B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Facilities Operator's registration statement and available at all reasonable times to be notified in case of emergency.

(C) Evidence that the Facilities Operator is in compliance with the insurance, indemnity and financial surety requirements pursuant to this Chapter.

(D) Such other information as the Chief Building Official may reasonably require.

(d) In addition to the annual registration requirement, each Facilities Operator shall keep all required registration information current at all times and shall provide the City with notice of changes to the required information within fifteen (15) days following the date on which the Facilities Operator has notice of the need for such change.

907.11 NONCONFORMING FACILITIES.

(a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this Chapter but that do not comply with the requirements of this Chapter may remain in the Right-of-Way but shall be considered a "Nonconforming Facility."

(b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant to Section 907.10 within ninety (90) days of the date this ordinance takes effect.

(c) If a Nonconforming Facility is damaged or destroyed beyond repair, any replacement Facility must be designed in accordance with all provisions of this Chapter, the Design Guidelines, and state and federal law and regulations.

907.12 ABANDONED AND DAMAGED FACILITIES.

(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within three hundred sixty five (365) days from the date the use was discontinued, the Facilities shall be considered a nuisance and the City may remove the Facilities at the expense of the Facilities Operator.

(b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than thirty (30) days after obtaining written notice that the Facilities are damaged. If the damaged Facilities are not repaired within thirty (30) days, then the damaged Facilities shall be considered a nuisance and the City may repair or remove the Facilities at the expense of the Facilities Operator.

907.13 INSURANCE REQUIREMENTS.

(a) As a condition of the City's consent to occupy the Right-of-Way, a Facilities Operator must secure and maintain the following liability insurance policies insuring both the

Facilities Operator and as additional insureds the City, its elected and appointed officers, officials, agents and employees:

(1) Comprehensive general liability insurance with limits not less than:

(A) Five Million Dollars ($5,000,000.00) for bodily injury or death to each person;
(B) Five Million Dollars ($5,000,000.00) for property damage resulting from any one (1) accident; and
(C) Five Million Dollars ($5,000,000.00) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars ($3,000,000.00) for each person and Three Million Dollars ($3,000,000.00) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars ($1,000,000.00).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars ($3,000,000.00).

(b) Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Chief Building Official of such intent to cancel or not to renew."

(c) Within sixty (60) days after receipt by the City of the notice provided for in subsection (b) above, and in no event later than thirty (30) days prior to the cancellation of the policy, the Facilities Operator shall obtain and furnish to the City replacement insurance policy meeting the requirements of this Section.

907.14 INDEMNIFICATION.

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

907.15 FINANCIAL SURETY.

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and applicable state and federal law. The financial surety must be in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within ten (10) business days after the City notifies the Facilities Operator that it has drawn on the financial surety.

907.16 RESERVED SPACE.

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

907.17 REMOVAL OR RELOCATION OF FACILITIES.

(a) The City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving notice that the Facilities are located improperly.

907.18 NOTICE OF WORK.

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

907.19 APPEAL.

An Applicant may appeal a decision made by the Chief Building Official to the Board of Zoning Appeals per Chapter 1127 of the Planning and Zoning Code.

907.20 SEVERABILITY

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

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

907.99 PENALTIES; EQUITABLE REMEDIES.

(a) Any person or entity found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.

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

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

Section 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare, and for the further reasons stated in the preamble hereof, wherefore this Ordinance shall be in full force and take effect immediately upon its passage and approval by the Mayor.

PASSED: July 10, 2018

PRESIDENT OF COUNCIL

CLERK OF COUNCIL

APPROVED: July 10, 2018

MAYOR