

ORDINANCE RECORD

VILLAGE OF NEWBURGH HEIGHTS, OHIO

ORDINANCE NO. 2022-43

INTRODUCED BY: Mayor Traore

**AN ORDINANCE ENACTING CODIFIED ORDINANCE CHAPTER 931 ENTITLED "USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES," AND DECLARING AN EMERGENCY.**

WHEREAS, small cell technology is being implemented across the country and in Northeast Ohio to supplement the provision of cellular and data technology to consumers; and

WHEREAS, the Village wishes to regulate the installation and/or use of small cell infrastructure within the public right-of-way by implementing design and safety standards;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF NEWBURGH HEIGHTS, CUYAHOGA COUNTY, OHIO, at least two-thirds of all the members elected thereto concurring, that:

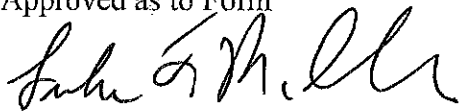
Section 1. The Village Council hereby enacts Codified Ordinance Chapter 931 entitled "Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures," as set forth in Exhibit A attached hereto, which is incorporated herein by reference as if fully rewritten.

Section 2. That 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 that resulted in such formal action occurred in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village, since the Village has already received inquiries from cellular companies about installation of small cell infrastructure, and the Village wishes to have regulations in place prior to installation of such infrastructure; wherefore, this ordinance shall be in full force and effect from and immediately after its adoption and approval by the Mayor.

PASSED: June 7, 2022

Approved as to Form

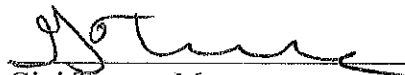


Solicitor

1<sup>ST</sup> Reading: 6-7-2022

2<sup>ND</sup> Reading: 6-7-2022

2022-43 3<sup>RD</sup> Reading: 6-7-2022



Gigi Traore, Mayor  
Village of Newburgh Heights, Ohio



Cathleen Nagorski, Fiscal Officer  
Village of Newburgh Heights, Ohio

EXHIBIT A

**CHAPTER 931**

**Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures**

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- 931.01 Overview and purpose; definitions; effective date.
- 931.02 Consent required.
- 931.03 Permit application types.
- 931.04 Consolidated consent applications.
- 931.05 Application fee.
- 931.06 Attachment fee.
- 931.07 Required application materials.
- 931.08 Application review.
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- 931.12 Abandoned and damaged facilities.
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- 931.19 Construction permit.
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- 931.22 Design specifications for collocation.
- 931.23 Design specifications for antennas.
- 931.24 Design specifications for wireless support structure-mounted equipment.
- 931.25 Design specifications for ground-mounted small cell equipment.

- 931.26 Design specifications for cables.
- 931.27 Design specifications for electrical meters.
- 931.28 Design specifications for utility lines.
- 931.29 Design specifications for replacement of wireless support structures.
- 931.30 Design specifications for new wireless support structures.
- 931.31 Historic district design guideline regulations.
- 931.32 Underground area design guideline regulations.
- 931.33 Discretionary waiver.
- 931.99 Penalties; equitable remedies

### **931.01 OVERVIEW AND PURPOSE; DEFINITIONS; EFFECTIVE DATE.**

(a) The purpose of this Chapter is to:

- (1) Protect the health, safety, and welfare of the residents of the Village;
- (2) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the Village's Right-of-Way to protect the health, safety, and welfare of the citizens of the Village;
- (3) Preserve the existing or intended character of the Village, including the Village's residential neighborhoods, commercial districts and other business or light industrial districts;
- (4) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures; and
- (5) Comply with, and not conflict with or preempt, all applicable state and federal law; and
- (6) Facilitate deployment of small cell Facilities and advanced wireless communications within the Village in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.

(b) For the purpose of this Chapter, and the interpretation and enforcement hereof, 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 Village 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 of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, vertical cable runs and other appurtenances.

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

(5) "Design Guidelines" means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established in Sections 931.21 et seq. herein.

(6) "Eligible Facilities 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;

#### Use of Public Ways for Small Cell Wireless Facilities and Wireless

C. The installation for any new ground-mounted equipment cabinets if there are not 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; or

F. Any change that does not comply with this Chapter, including but not limited to the Design Guidelines set forth in Sections 931.21 et seq. herein, 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 Village prior to the enactment of the Spectrum Act on February 22, 2012).

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

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

A. Operators;

B. Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio 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 Ohio R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.

(9) "Historic District" means 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;

B. A registered historic district as defined in section 149.311 of the Revised Code.

(10) "Operator" means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including 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.

(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 Village or other public entity or political subdivision.

(12) "Small Cell Facility" means a wireless facility;

A. That meets both of the following requirements:

1. Each antenna is located inside an enclosure or 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

2. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (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; and

B. That includes a "Small Wireless Facility," which is a type of Small Cell Facility (i) in which each antenna is located within an enclosure of not more than three (3) 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 three (3) cubic feet in volume, (ii) where such antenna is associated with a structure (a) 50 feet or less in heights, including the antenna, or (b) that is not more than ten percent (10%) taller than adjacent structures, or (c) is not extended by more than ten percent (10%) or to a height exceeding 50 feet, whichever is greater, and (iii) that also otherwise satisfies the definition of "Small Wireless Facilities" found in the Federal Communication Commission's September 26, 2018 Small Cell Order, FCC 18-133.

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

(14) "Small Cell Use Permit" means the permit granted by the Village 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) "Underground Area" means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structures and facilities owned by the Village or a transit authority, are located underground.

(16) "Wireless Support Structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) feet or taller sign pole, or utility pole capable to supporting Small Cell Facilities. As used in this Chapter, "Wireless Support Structure" excludes the following except in connection with a Small Wireless Facility, in which case the following are not included:

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 trolley buses.

(17) "Mayor" means Mayor or designee.

(18) "Village" means the Village of Newburgh Heights.

### **931.02 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 Mayor or designee in accordance with the requirements in this Chapter, including, but not limited to the Design Guidelines set forth in Section 931.21 et seq. herein, Ohio R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the Mayor or designee 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 Village.

(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 Design Guidelines set forth in Sections 931.21 et seq. herein. Further, no Small Cell Use Permit shall be constructed as any warranty of title.

### **931.03 PERMIT APPLICATION TYPES.**

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

(a) Type 1: Eligible Facilities Requests.

(b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that is not an Eligible Facilities Request.

(c) Type 3: New Wireless Support Structure. Such applications will 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.

(d) For Type 2 and Type 3 Applications, Applicants shall indicate whether the Application does or does not include or relate to a Small Wireless Facility.

(1) If an application involves a Small Wireless Facility, any related required permits will be issued within the designated review period set forth below, if complete applications for such permits are filed no later than the application for the Small Cell Facilities Use Permit.

### **931.04 CONSOLIDATED CONSENT APPLICATIONS.**

(a) Pursuant to Ohio 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 Small Cell Facilities cannot be combined with applications for Wireless Support Structures unless the Small Cell Facility involved is a Small Wireless Facility as defined in Section 931(b)(13).

(4) Applications for Small Wireless Facilities cannot be combined with applications for Small cell Facilities and Equipment, or Wireless Support Structures, that do not involve Small Wireless Facilities.

(5) If an application for a new Wireless Support Structure is related to an application for Small Wireless Facility antenna to be collocated thereupon, those applications may be filed on a consolidated basis but will be considered separate applications subject to separate application fees.

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

(c) Although applications involving Small Wireless Facilities may be filed on a consolidated basis, such applications may not be commingled with applications for collocation, or new Wireless Support Structures, that do not involve a Small Wireless Facility. The limit on the number of applications that may be filed in a consolidated application pursuant to Section 931.04(a) shall not apply to applications for Small Wireless Facilities.

(1) There is not limit on the number of Small Wireless Facilities applications that may be consolidated.

#### **931.05 APPLICATION FEE.**

(a) The fee for each application is two hundred fifty dollars (\$250.00). The Village shall adjust the fee by ten percent (10%) every five (5) years, rounded to the nearest five dollars (\$5.00), 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. This provision also applied when an application for a new Wireless Support Structure is related to an application for a Small

Wireless Facility to be collocated thereupon; that is, this situation requires two applications, with each application subject to the fee provided in Section 931.05(a).

### **931.06 ATTACHMENT FEE.**

(a) In addition to the Application Fee, an annual fee of two hundred dollars (\$200.00) shall be paid to the Village for each Small Cell Facility attached to a municipally-owned Wireless Support. The Village shall adjust the attachment fee by ten percent (10%) every five years, rounded to the nearest five dollars (\$5.00), 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.

### **931.07 REQUIRED APPLICATION MATERIALS.**

The Applicant must submit the following documentation 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, in any way, responsible for the Facilities.

(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 by GPS coordinates and/or in degrees, minutes and seconds ("DMS");

(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 three hundred (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 color photo simulation of the proposed Facilities. Scale shall be no smaller than one-inch equals forty (40) feet and shall depict surrounding area within one hundred (100) feet of the proposed Facilities.

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

(i) 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.

(j) Analysis demonstrating that the proposed Facilities do not interfere with the Village's public safety radio system, traffic and emergency signal light system, or other Village 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 Village infrastructure and Applicant's proposed Facilities.

(k) A landscape plan that demonstrates screening of proposed small cell equipment.

(l) Detailed and/or shop 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.

(m) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.

### **931.08 APPLICATION REVIEW.**

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

(1) Type 1 Applications: Sixty (60) days;

(2) Type 2 Applications: Ninety (90) days, except that for Small Wireless Facilities, that are not to be collocated upon a new Wireless Support Structure, the timeframe for a Type 2 application shall be sixty (60) days.

(3) Type 3 Applications: 120 days, except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be ninety (90) days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant shall be notified on the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete, as described below:

(1) To toll the time period for incompleteness, the Village must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application; except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.

A. In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to subsection (1), the time period set forth in subsection (a) shall be deemed never to have started running at all until the Applicant provides a supplemental submission.

(2) The time period set forth in subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the Village's notice of incompleteness pursuant to subsection (b)(1), but may be tolled again if the Village notifies the Applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the Village of the deficiencies in a supplemental submission tolls the time period set forth in subsection (a) until the Applicant supplies the specified information.

(c) The timeframes set out in subsection (2) may be tolled by mutual agreement between the Applicant and the Village. The timeframes in subsections 9a)(2) and (a)(3) may also be tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of subsections (c)(1) and (c)(2) below do not apply:

(1) If the Village receives between twenty-five (25) and forty (40) applications in a thirty (30) day period, then the Village may toll for an additional twenty-one (21) days beginning with the twenty-sixth (26th) application.

(2) If the Village receives more than forty (40) applications in a thirty (30) day period, then the Village may toll for an additional fifteen (15) days for every additional fifteen

(15) applications received, up to a maximum tolling period of ninety (90) days, as indicated below:

- A. Applications 41-55: 36 additional days
- B. Applications 56-70: 51 additional days
- C. Applications 71-85: 66 additional days
- D. Application 86-100: 81 additional days
- E. Applications 101+: 90 additional days

(3) When an Applicant submits an underground area waiver pursuant to Section 931.32(d) herein, in which case the Village may toll for an additional fourteen (14) 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 931.16 here, then the Mayor or designed may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for Small Cell Use Permit is denied, the Village 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 may include, but are not limited to:

- (1) Failure to provide information required under Section 931.07;
- (2) Failure to comply with Design Guidelines set forth in Sections 931.21 et seq. herein;
- (3) Failure to provide financial surety pursuant to Section 931.15;
- (4) Failure to remove abandoned Facilities as required under Section 931.12;
- (5) Conflict with the historic nature or character of the surrounding area;
- (6) Conflict with planned future improvements in the Right-of-Way; and
- (7) Failure to comply with generally applicable health, safety, and welfare requirements.

### **931.09 PERMITTING PROCESS, DURATION, AND TERMINATION.**

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the Village 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 ten (10) years. Permits may be renewed for five (5) year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of ten (10) years or the duration of the Facilities Operator's agreement with a wireless service provided pursuant to Section 931.07(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 each and every applicable law and regulation.

(e) Pursuant to Ohio R.C. Section 4939.031(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 one hundred eight (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) Due to 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 one hundred eight (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 931.06, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual attachment fee was due.

(h) If the Facilities Operator fails to remit the annual registration required pursuant to Section 931.10, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual registration was due.

(i) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60-days written notice to the Village.

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

(k) The Village shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit.

### **931.10 ANNUAL REGISTRATION.**

Facilities Operators shall comply with the annual registration requirements set forth in Section 931.03 of Chapter 931, "Use of Public Ways by Service Providers."

### **931.11 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 931.03 by no later than November 1, 2018.

(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 established in Sections 931.21 et seq. Herein, and state and federal law and regulations.

### **931.12 ABANDONED AND DAMAGED FACILITIES.**

(a) A Facilities Operator shall provide written notice to the Village 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 Village may remove the Facilities at the expense of the Facilities Operator after providing thirty (30) days written notice to the Facilities Operator of its intent to do so.

(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 were damaged. If the damaged Facilities are not repaired within thirty (30) days, then the Village may repair or remove the damaged Facilities at the expense of the Facilities Operator after providing thirty (30) days written notice to the Facilities Operator of its intent to do so.

### **931.13 INSURANCE REQUIREMENTS.**

Facilities Operators shall comply with the insurance requirement set forth in Subsection 931.02(e).

### **931.14 INDEMNIFICATION.**

A Facilities Operator shall indemnify, protect, defend, and hold the Village 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, cause 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, resulting from or alleged to arise out of or result from

the negligent, careless or wrongful acts, omissions, failure to act or misconduct 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 subcontract of the Operator, or their respective officers, agents, employees, directors, or representative s while installing, repairing, or maintaining Facilities in the Right-of-Way.

#### **931.15 FINANCIAL SURETY.**

(a) Each Facilities Operators must procure and provide to the Village a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and Ohio R.C. Chapter 4939. The financial surety shall be in compliance with Subsection 931.02(g) or as otherwise determined reasonable by the Mayor or designee, such as being an amount sufficient to cover the cost of removal of all Facilities owned or operated by Facilities Operator.

(b) The Village may, in its sole discretion, draw on the financial surety to remove abandoned, unused, or unsafe Facilities, remove or repair damaged Facilities, or to repair damage to any Village 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 Village notifies the Facilities Operator that it has drawn on the financial surety.

#### **931.16 RESERVED SPACE.**

The Village reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The Village 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, Village Council, Building Commissioner, or Planning Commission. (Ord. 54-2020. Passed 7-6-20; Ord. 153-2021. Passed 12-6-21.)

#### **931.17 REMOVAL OR RELOCATION OF FACILITIES.**

(a) Consistent with R.C. 4939.08, the Village 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 Village. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receiving a request to do so from the Village, then the Village 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 Village, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving notice that the Facilities are located improperly.

#### **931.18 NOTICE OF WORK.**

A Facilities Operator shall notify the Mayor of all nonemergency 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 Village.

### **931.19 CONSTRUCTION PERMIT.**

(a) Facilities Operators are required to obtain a construction permit pursuant to Section 931.07 including, but not limited, to the construction bond set forth in Subsection 931.07(g), prior to commencing any of the following activities:

- (1) Collocation of small cell equipment on a Wireless Support Structure;
- (2) Replacement, modification, repair, or maintenance of small cell equipment;
- (3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
- (4) Any excavation of the Right-of-Way in connection with the activities described in this Section.

### **931.20 EXCAVATION PERMIT.**

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Section 931.07 including, but not limited, to the construction bond set for in Subsection 931.07(g).

### **931.21 GENERAL DESIGN STANDARDS.**

- (a) Facilities shall not be installed unless the Facilities are compliant with the Design Guidelines, set forth in Sections 931.21 et seq. herein, and any Application requirements, and all applicable local, state, and federal laws. Applicant shall have the burden to demonstrate by substantial and competent evidence that all Design Guidelines have been met.
- (b) A Facilities Operator shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in an application for a Small Cell Use Permit.
- (c) A Facilities Operator shall not construct, modify, or replace any Facilities without a construction permit pursuant to Section 931.07.
- (d) All work shall be performed in a professional manner consistent with the highest standards of workmanship.
- (e) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.
- (f) Facilities shall not be installed in any location that causes any interference with the Village's public safety radio system, traffic and emergency signal light system, or other Village safety communications systems or system components.

(g) The Village may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible or would materially inhibit the provision of wireless services by the Facilities Operator within the Village.

(h) Facilities shall not interfere with existing or planned Village-owned trees.

(i) Signage shall be mounted on all new Facilities providing the Facilities Operator's name, an emergency contact phone number, an informational contact number, and all other information required by law. Unless otherwise prohibited by law, signage shall be discreet in color and shall match the Facilities and surrounding area and font size used on the sign shall be no smaller than nine (9) point font and no larger than fourteen (14) point font.

(j) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from Facilities.

(k) A landscape plan, approved by the Director of Planning, shall be required for each Application. Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.

(l) The Village may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but shall not be limited to, fencing, public art, strategic placement, and placement within existing or replacement street furniture.

(m) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.

(n) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the Village, and the color shall match the Facilities. The Village may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the Village determines a non-matching color would better fulfill the purposes of these Design Guidelines or match the surrounding area.

(o) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facility Operator's sole expense as soon as practicable, but no later than thirty (30) days from the date the Facilities Operator receives notice of the graffiti. The Village shall remove graffiti at the expense of the Facilities Operator after the thirty (30) days expires.

## **931.22 DESIGN SPECIFICATIONS FOR COLLOCATION.**

(a) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.

(b) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least eight (8) feet above ground level. If Small cell Equipment is projecting toward the street then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level.

### **931.23 DESIGN SPECIFICATIONS FOR ANTENNAS.**

(a) Antennas must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.

(b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet; provided, however, that the permissible increase in height resulting from collocation or installation of a Small Wireless Facility on a Wireless Support Structure shall be as provided in Section 931.01(b)(13).

(c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister or other shroud. All Accessory Equipment associated with the antenna shall be concealed and shall not visibly protrude from the shroud or canister.

(d) The width of the canister or other shroud encasing the antenna and Accessory Equipment shall not exceed the width of the narrowest portion of the Wireless Support Structure.

(e) The enclosure or shroud shall be painted to match or complement the Wireless Support Structure.

(f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.

(g) Antennas shall not impair light or substantially obstruct views from nearby window(s).

(h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The Village may approve a side-mounted antenna if, in the Village's discretion, the side-mounted antenna would be more appropriate given the built environment, neighborhood character, overall site appearance or would otherwise promote the purposes in these Design Guidelines.

### **931.24 DESIGN SPECIFICATIONS FOR WIRELESS SUPPORT STRUCTURE-MOUNTED EQUIPMENT.**

(a) All Wireless Support Structure-mounted Small Cell Equipment other than the antenna(s) and electric meter must be concealed within an equipment cabinet.

(b) Equipment cabinets shall be mounted flush to the Wireless Support Structure.

(c) Equipment cabinets shall be stacked together on the same side of the Wireless Support Structure and oriented away from any windows and doorways to minimize visual impacts thereupon. The cabinet width shall not exceed the Wireless Support Structure's width unless technologically infeasible.

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

#### **931.25 DESIGN SPECIFICATIONS FOR GROUND-MOUNTED SMALL CELL EQUIPMENT.**

(a) The Village shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant (1) proposes the ground-mounted equipment in connection with a Collocation, and (2) shows that the equipment cannot be feasibly placed on the Wireless Support Structure or in an underground vault.

(b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not technically feasible, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.

(c) All ground-mounted Small cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.

(d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in any way. The Small Cell Equipment's heights, width, length and placement should be as inconspicuous and as visually compatible with its context as practicable.

#### **931.26 DESIGN SPECIFICATIONS FOR CABLES.**

(a) All cables, conduit and wiring shall be located inside conduit and inside the Wireless Support Structure or an equipment cabinet.

(b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible.

#### **931.27 DESIGN SPECIFICATIONS FOR ELECTRICAL METERS.**

(a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.

(b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

#### **931.28 DESIGN SPECIFICATIONS FOR UTILITY LINES.**

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

### **931.29 DESIGN SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES.**

(a) Unless otherwise determined by Mayor, a Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:

(1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or

(2) An existing Wireless Support Structure is located within one hundred (100) feet of the proposed site or a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

(b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the Village.

(1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the Village.

(2) The Village may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.

(c) Except in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 931.01(b)(13). The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure. Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the Village.

(e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the Village.

(1) If partially removed, the original Wireless Support Structure foundation shall be removed to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half (1/2) inch to three-quarter (3/4) inch rocks. The remaining eight (8) inches shall be topsoil.

(2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The Director of Planning shall determine the appropriate type of backfill material and compaction required in landscaped areas.

### **931.30 DESIGN SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES.**

(a) New Wireless Support Structures shall be designed and constructed to accommodate at least two (2) sets of Small Cell Equipment on the same Wireless Support Structure.

(b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles unless otherwise determined by the Mayor.

(c) Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) In residential zoning districts, new Wireless Support Structures shall be located at the shared property line between two (2) residential parcels near where the parcels intersect the Right-of-Way when available.

(e) In commercial zoning districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines near where the parcels intersect the Right-of-Way.

(f) In park zoning districts, new Wireless Support Structures shall be located in the least visible location practicable, as determined by the Mayor.

(g) New Wireless Support Structures shall not interfere with any metered parking space.

(h) A new Wireless Support Structure shall not be located in front of a building entrance or exit.

(i) Except in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility to be mounted shall be as provided in Section 931.01(b)(13). The overall height of a new Wireless Support Structure,

including proposed Co-located antenna, shall not be more than thirty-five (35) feet in height above ground level in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed new Wireless Support Structure.

(j) The Village may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure. Unless otherwise specified by the Village, new wood Wireless Support Structures are prohibited in the following zoning districts:

- (1) All residential zoning districts; and
- (2) All commercial zoning districts.

(k) Facilities Operators shall be discouraged from installing a new Wireless Support Structure within one hundred (100) feet of a building designated to be of historic importance under local, state or federal laws.

### **931.31 HISTORIC DISTRICT DESIGN GUIDELINE REGULATIONS.**

Except antennas, all Small Cell Equipment to be located in the Right-of-Way in a Historic District including, but not limited to, Ambler Heights Historic District, Euclid Golf Historic District, Euclid Heights Historic District, Fairhill Road Village Historic District, Fairmount Boulevard Historic District, Forest Hill Historic District, Herrick Mews (Overlook Road Carriage House) Historic District, Inglewood Historic District, Mayfield Heights Historic District, Shaker Farm Historic District, and Shaker Village Historic District, Nela Park Historic District, shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the Village may specify, as long as such measures do not have the effect of prohibiting or materially inhibiting the Facilities Operator's provision of service. Such measures are not considered part of the small cell facility for purposes of facility size restrictions in this Chapter. A waiver submitted pursuant to Section 931.32(d) will be considered if such measures are shown to be technologically infeasible.

### **931.32 UNDERGROUND AREA DESIGN GUIDELINE REGULATIONS.**

- (a) Subject to subsection (b), a Facilities Operator shall locate its Facilities underground in an Underground Area.
- (b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an Existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.
- (c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.

(d) An Operator may apply to the Mayor for a waiver of the underground placement requirement if the Operator is unable to achieve its service objective under the following circumstances:

- (1) From a location in the public Right-of-Way where the prohibition does not apply;
- (2) From a utility easement the service provider has the right to access; and
- (3) From other suitable locations or structures made available by the Village at reasonable rates, fees, and terms.

(e) Submission of a waiver pursuant to subsection (d) herein is subject to the Facilities Operator's agreement to toll the timeframes set forth in Subsection 931.08(a) of the Codified Ordinances by fourteen (14) days.

### **931.33 DISCRETIONARY WAIVER.**

It is within the Mayor's reasonable discretion to waive a portion or portions of this Chapter, as permitted or warranted under state and federal law, where such requirements, in the Mayor's judgment, are not necessary and/or appropriate to protect the Village's interests and/or not consistent with the purposes and intent of this Chapter.

### **931.99 PENALTIES; EQUITABLE REMEDIES.**

(a) Criminal Penalties. Any Applicant or Operator or other Person acting as the agent of an Applicant or Operator who is found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

(1) In lieu of the criminal penalties set forth above, the Mayor may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.

(2) The Civil Forfeiture shall be in an amount payable to the Village of 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 on which a violation occurs or continues.

(3) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.

(4) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the Village may assess penalties

against the Service Provider. The time in which to cure the violation may be extended by the Village if additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.

(5) The Service Provider may dispute the alleged violation by providing the Village with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The Village shall set a date for hearing of the alleged violation no sooner than thirty (30) days and no later than sixty (60) days from receipt of the notice of dispute.

(6) The Village shall issue a written decision on the service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the Village finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this Chapter.