

EMERGENCY

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ORDAINING new Chapter 719, “Wireless Communications Facilities,” of Title VII, “General Regulations,” of the Cincinnati Municipal Code to provide wireless communications companies and their customers with access to the right-of-way, in order to comply with federal law and Federal Communications Commission regulations regarding wireless facilities, to establish clear rules for the siting of wireless communications facilities in the right-of-way, and to protect the City’s interests in preserving the right-of-way aesthetically and as a pedestrian-friendly thoroughfare.

WHEREAS, wireless providers and companies that build infrastructure to support wireless communications equipment, or wireless communications facilities, have sought to install wireless communications facilities in the right-of-way, whether by attaching to existing structures or, more commonly, by installing new structures; and

WHEREAS, federal law authorizes the Federal Communications Commission (FCC) to establish rules related to installing, or siting, wireless communications facilities, the FCC has promulgated such rules, and the rules are applicable to local governments nationwide; and

WHEREAS, Council desires to create rules and regulations governing the placement of wireless communications facilities in the right-of-way to address the increasing demand to install structures in the right-of-way in a manner that complies with the FCC requirements, treats applicants equally, communicates the standards for the City’s decisions regarding applications, and ensures that wireless providers can provide coverage to customers in the City; and

WHEREAS, Council desires that the rules governing the receipt of and response to applications to locate facilities in the right-of-way also preserve the character and aesthetic appeal of the City’s neighborhoods and avoid excessive structures in the right-of-way that could create safety hazards or impede the comfortable flow of pedestrian traffic; and

WHEREAS, establishing rules and processes for wireless communications facilities is in accordance with the guiding policy principle to “Preserve our resources and facilitate sustainable development” as described on page 81 of Plan Cincinnati (2012), the Compete goals to “Foster a climate conducive to growth, investment, stability, and opportunity” as described on page 103, the Live goal to “Create a more livable community” as described on page 156, and the Sustain goal to “Preserve our natural and built environment” as described on page 197; and

WHEREAS, Council finds it appropriate to ordain a new system of rules to govern wireless communications facilities in the right-of-way and to provide for the public health, safety, morals, and general welfare; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Chapter 719, “Wireless Communications Facilities,” of Title VII, “General Regulations,” of the Cincinnati Municipal Code is hereby ordained to read as follows:

CHAPTER 719 - WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

Sec. 719. - Purpose and goals.

The purpose of this chapter is to establish general procedures and guidelines for the siting of wireless communications facilities in the right-of-way. The goals of this chapter are to:

- (a) Provide procedures and guidelines for the location, placement, and construction of wireless communications facilities in the city’s right-of-way and for payment of fees and charges to be uniformly applied to all applicants and owners of wireless communications facilities or support structures for such facilities.
- (b) Provide clear review requirements for applications to site wireless communications facilities in the right-of-way.
- (c) Ensure that wireless communications facilities will be safe and will blend into their environment to the greatest extent possible.
- (d) Enhance the ability of providers of wireless communications services to provide such services to customers in the city quickly, effectively, and efficiently.
- (e) Preserve the character of the city’s neighborhoods and its historic districts.
- (f) Comply with the Telecommunications Act of 1996 (47 U.S.C § 332).
- (g) Comply with the Spectrum Act § 6409 (47 U.S.C. § 1455).

Sec. 719-1. - Applicability.

- (a) *Governing guidance for wireless communications facilities.* All wireless communications facilities in the right-of-way shall conform to the provisions of this chapter and to the detailed design guidelines and examples promulgated by the director of the department of transportation and engineering, as described in section 719-11(e).
- (b) *Existing wireless communications facilities.* Wireless communications facilities for which a permit has been issued prior to the effective date of this chapter shall not be

required to meet the requirements of this chapter except as provided in section 719-17 regarding nonconforming wireless communications facilities.

- (c) *Exclusion for amateur radio facilities.* This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- (d) *Relationship to other chapters.* This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of wireless communications facilities in the right-of-way.

Sec. 719-3. - Definitions.

The following words and phrases shall be construed throughout this chapter to have the following meanings:

Antenna: Any apparatus designed for the purpose of the transmission or reception of radio frequency (“RF”) radiation, to be operated or operating from a fixed location to facilitate wireless communications services including but not limited to the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including any amplifiers, repeaters, switches.

Applicant: Any person that submits an application to the city to develop, construct, build, modify, or erect a wireless communications facility in the ROW.

Application: A formal, written request made by an applicant to the city, in the form required by the department of transportation and engineering, to develop, construct, build, modify, or erect a wireless communications facility in the ROW.

Base Station: The equipment and non-tower supporting structure at a fixed location that enable Federal Communications Commission (“FCC”) licensed or authorized wireless communications between user equipment and a communications network. A base station includes any equipment associated with wireless communications service, including but not limited to radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supply, and comparable equipment associated with a wireless communications facility.

Collocation: The mounting or installation of transmission equipment on an existing eligible facility or non-tower supporting structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Detailed Design Guidelines and Examples: Those standards promulgated by the department of transportation and engineering for the design and installation of structures supporting wireless communications facilities in the ROW, which are

effective insofar as they do not conflict with FCC rules and regulations or the design standards established in section 719-11 of this chapter.

Design Standards: Those standards established in section 719-11 of this chapter, approved by the city planning commission and adopted by city council, for the design and installation of wireless communications facilities in the ROW, which are supplemented by detailed design guidelines and examples promulgated by the department of transportation and engineering, and which are effective insofar as they do not conflict with FCC rules and regulations.

Eligible Facility: An existing, legally conforming structure that meets the definition of either a tower or base station, which structure was approved through the appropriate siting review and approval process under city of Cincinnati code or regulation applicable at the time of review, approval, and installation.

Equipment Cabinet: A structure containing transmission equipment associated with a wireless communication facility, including sub-grade vaults, manholes, handholes, and drop vaults.

Modification: The collocation, removal, or replacement of transmission equipment.

Person: Any individual, corporation, partnership, joint venture, agency, unincorporated association or municipal corporation or agency within the State of Ohio, or any combination thereof.

Provider: A person, other than a public utility, who is licensed by the FCC to provide telecommunications service to the public, or for purposes of this chapter of the Cincinnati Municipal Code, a person that will provide infrastructure for wireless communications facilities owned by an FCC-licensed provider of telecommunications services.

Right-Of-Way ("ROW"): Real property, whether or not in the form of a strip, for or devoted to (1) public transportation purposes; or (2) the placement of the city's utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right-of-way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the city.

Substantial Modification: A modification to an eligible facility or nonconforming wireless communications facility that increases the facility's originally approved size by more than 10% or 10 feet in height, whichever is greater, or by 6 feet in width, or that defeats the existing concealment elements of the eligible facility.

Siting: The location, construction, collocation, modification, or installation of a wireless communications facility.

Non-Tower Supporting Structure: An existing building or structure, other than a tower as defined in this section, that may be transformed into a base station through the mounting or installation of an antenna or transmission equipment; non-tower supporting structures include but are not limited to buildings, steeples, water towers, utility poles, light poles, and outdoor advertising signs.

Tower: Any structure built for the sole or primary purpose of supporting any FCC licensed or authorized antennas and their associated transmission equipment or facilities.

Transmission Equipment: Any equipment that facilitates transmission of any FCC licensed or authorized wireless communications service, including but not limited to radio transceivers, and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply. This definition includes equipment in any technological configuration associated with any FCC authorized wireless transmission, licensed or unlicensed, commercial mobile, private mobile, fixed wireless microwave backhaul, and fixed broadband.

Wireless Communications Facility: Any unstaffed installation for the transmission and/or reception of radio frequency signals for wireless communications services, typically consisting of a tower, base station, transmission equipment, equipment cabinets, materials used to conceal or enshroud the installation, and the land or structure on which they are all situated.

Wireless Communications Service: Any personal wireless service as defined by the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, paging, and similar services that currently exist or that may in the future be developed.

Sec. 719-5. - Applications.

- (a) *Application fee.* An applicant seeking permission for siting a wireless communications facility in the ROW shall pay the city an application fee of _____ at the time of filing the application, an amount calculated to reimburse the city for the cost of the city staff time required to process an application.

The department of transportation and engineering is additionally authorized to charge the application for actual costs incurred in its analysis, evaluation, and response to an application under this chapter that exceed the application fee. The applicant shall reimburse the city for such additional costs as have been documented by the city and determined to be reasonably necessary by the director of the department of transportation and engineering.

(b) Application materials. All applications for the construction, installation, modification, or maintenance of a wireless communications facility shall include the following information:

1. *Radio frequency (“RF”).* A sworn affidavit from a radio frequency engineer that the placement of the wireless communications facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communication services enjoyed by adjacent residential and nonresidential properties.
 - i. The Telecommunications Act of 1996 gives the FCC sole power to regulate RF emissions and does not allow the city to condition or deny on the basis of RF impacts the approval of any wireless communications facilities which meet or exceed FCC standards. In order to make available information to the city’s citizens, the applicant shall provide to the city copies of ongoing FCC information and RF emission standards for transmissions from a wireless communications facility with support structure or an attached wireless communications facility.
 - ii. Information on the proposed power intensity of their wireless communications facilities. Applicants shall demonstrate that the proposed wireless communications facilities meet or exceed FCC standards and shall supplement that information upon the request of the city no less frequently than annually. Once installed, any technical change that could increase power or output of the wireless communications facility shall be immediately reported to the city.
2. *FCC license and emergency contact.* Identification of the provider(s) who intend to use the facility and a copy of the provider’s current FCC license. The provider shall maintain with the city the current name, address, and emergency telephone number of the owner or operator of the support or attachment structure on which the antenna array is mounted.
3. *Detailed design.* A detailed description of the location and design of the proposed wireless communications facility. This description shall include a rendering of the proposed design, including a dimensioned plan and elevation and a visual depiction of the surrounding area and existing structures in proximity to the proposed facility.
4. *Need for wireless communications coverage at location.* A sworn affidavit from the provider(s) whose wireless communications facilities will be sited at the location affirming that the wireless communications

facility is needed at the proposed location in order to provide wireless service to the customers of the provider(s).

- i. Demonstration of a current “coverage gap” is ideal, but a model of a likely near-term gap based on usage projections may be an acceptable demonstration of the need for wireless communications coverage in a location.
 - ii. The affidavit may include visual depictions of coverage, usage data, and any other relevant information demonstrating the need for wireless coverage; the signatory swears to the veracity of all information presented in the document.
 - iii. This requirement does not include providing any information pertaining to the applicant’s business need, business plan, or financial information.
5. *Eligible facility or non-tower supporting structure attachment agreement.* If a base station is to be erected on a third party’s eligible facility or non-tower supporting structure, the written consent of the third party.
6. *Other information.* Any other information required on the application form prescribed by the department of transportation that the department deems necessary to determine the application’s conformity with this chapter.

(c) *Single facility per application.* A single application shall propose modification of no more than one existing eligible facility or non-tower supporting structure or shall propose no more than one new tower.

Sec. 719-7. - Categories of Applications and Timelines for Decision.

- (a) *Categories.* In accordance with FCC regulations, the department of transportation and engineering shall classify every application to locate a wireless communications facility in the ROW as one of the following three types:
1. A Type I application is:
 - i. a request for a modification;
 - ii. to an eligible facility; and
 - iii. the modification does not substantially change the physical dimensions of the eligible facility.
 2. A Type II application is:
 - i. a request for a modification;
 - ii. to an eligible facility; and

- iii. the modification substantially changes the physical dimensions of the eligible facility.
3. A Type III application is:
- i. a request to mount or install new antennae and transmission equipment to a non-tower supporting structure in the ROW that does not already support transmission equipment; or
 - ii. a request to construct a new tower in the ROW.
- (b) *Time for decision.* Upon its receipt of a complete application, the department of transportation and engineering shall review the application and provide the applicant with a written determination on the application within the timeframes below:
1. Type I application: 60 days.
 2. Type II application: 90 days.
 3. Type III application: 150 days.
- (c) *Completeness of application.* The time frames provided for the review of applications established shall not commence until the department of transportation and engineering's receipt of a complete application. If the department of transportation determines that an application is incomplete, it shall inform the applicant in writing and identify the missing documentation or information that caused the application to be incomplete.

Sec. 719-9. - Obligations of City When Application Received.

- (a) *Standards of Review.* The department of transportation shall review and consider each application based upon its classification. The applicant bears the burden to demonstrate by a preponderance of the evidence that the following standards are met:
1. Type I: The application seeks a modification to an existing wireless transmission facility that does not constitute a substantial modification.
 2. Type II: The application conforms to the provisions of this chapter and the Cincinnati Municipal Code.
 3. Type III: The City's denial of the application would unreasonably discriminate among providers or would effectively prevent the provision of personal wireless communications service within the affected area.
- (b) *Notice to residents.* Upon receipt of a complete application, the department of transportation and engineering shall provide notice of all Type II and Type III applications to the owners of all real property located within 200 feet of the site of the proposed wireless communications facility. The notice shall provide that the owners of real property may provide written submissions to the department of transportation and engineering indicating their position whether the proposed wireless communications facility conforms to the provisions of this chapter. The department

of transportation and engineering shall not be required to provide notice of Type I applications.

(c) *Approval.* Upon determining that an application for a wireless communications facility conforms to the provision of this chapter and the Cincinnati Municipal Code, the department of transportation and engineering shall provide the applicant with a written determination, including findings of fact and conclusions of law. Approval of an application shall include the following permissions:

1. *Permit to Construct.* A permit to construct the approved wireless transmission facility, subject to any conditions established by the department of transportation and engineering to carry out the purposes and intent of this chapter and the Cincinnati Municipal Code.

2. *Revocable Street Privilege ("RSP") for use of ROW required.* A RSP granting the application the right to occupy the ROW, subject to any conditions established by the department of transportation and engineering to carry out the purposes and intent of this chapter and the Cincinnati Municipal Code. The RSP shall not convey title, equitable or legal, in the ROW.

i. *RSP fee.* The applicant shall pay the annual user fee pursuant to the RSP for siting a wireless communications facility in the ROW of _____, an amount based on the value of the average number of hours annually that city staff will spend to manage and monitor existing wireless communications facilities in the ROW.

3. *Eligible facility or non-tower supporting structure attachment agreement.* If the base station is to be erected on a city-owned non-tower supporting structure, the provider must enter into a non-tower supporting structure attachment agreement with the city and pay the city an annual rental fee in accordance with that agreement.

i. A wireless communications facility collocated on a city-owned non-tower supporting structure should have its own power source rather than using the same power source that provides power for the original, primary purpose of the non-tower supporting structure.

(d) *Restrictions on RSPs.* An RSP that permits siting wireless communications facilities in the ROW may be transferred upon notification to the city and acceptance by the transferee to allow the transferee to site wireless facilities in the same location on the same supporting structure as the transferor. Such a transfer may be made only to a provider who possesses a current RSP from the city for siting wireless facilities elsewhere in the ROW.

An RSP that permits siting wireless communications facilities in the ROW shall have an indefinite term but shall be revocable at any time in the sole discretion of the city. The city's right to revoke an RSP that permits siting wireless communications facilities in the ROW shall be absolute without limitation and may be exercised in the following events among others:

- i. Changes in FCC regulations;
- ii. Changes in Ohio law;
- iii. Guidance from courts interpreting existing law and regulations;
- iv. Technological advances allowing more effective transmission equipment in a smaller space;
- v. Technological advances equating to fewer wireless communications facilities being necessary in a given geographic area;
- vi. Advanced understanding gained from implementing the current design guidelines and siting regulations;
- vii. Advanced understanding gained from other municipalities implementing design guidelines under the current or future FCC regulations.

(e) *Denial.* Upon determining that an application for a wireless transportation facility does not conform to the provision of this chapter, the department of transportation and engineering shall provide the applicant with a written determination, including findings of fact and conclusions of law. The city reserves the right to deny an application if any one of the following conditions exist:

1. The applicant has not demonstrated that its application conforms to the provisions of this chapter and the Cincinnati Municipal Code, including the design standards established pursuant to this chapter;
2. The applicant is not licensed by the FCC as a provider or seeking to provide wireless communications infrastructure for a provider licensed by the FCC;
3. The applicant is not authorized to conduct business in the State of Ohio;
4. The applicant has failed within the prior three years to comply or is presently not in full compliance with the requirements of this chapter with regard to another wireless communications facility that is not the subject of the application in question;
5. The applicant is in default of its obligation to pay to the city fees imposed by this chapter;
6. The design or location does not comply with the relevant standards promulgated by the American Association of State Highway and Transportation Officials (AASHTO) and utilized by the department of transportation of engineering for construction in the right-of-way.

Sec. 719-11. - Design Standards and Siting Preferences.

- (a) *General design principle.* Every wireless communications facility must be designed with the goals of visual concealment, camouflage, and stealth in order to make wireless communications facilities in the ROW as visually and physically unobtrusive as possible.
- (b) *Order of preference in design.* The department of transportation and engineering shall consider the following order of preferred design for new wireless communications facilities in the right-of-way in reviewing an application:
1. Collocation on an eligible facility currently supporting wireless communications facilities;
 2. Collocation on an existing non-tower supporting structure with only the antenna above ground attached to the existing non-tower supporting structure in a manner to conceal the antenna or make it unobtrusive, with the remainder of the transmission equipment in a sub-grade vault;
 3. Installation of a new non-tower supporting structure that serves an additional public function beyond supporting wireless communications facilities;
 - i. The most preferred function is a non-tower supporting structure that serves as a street light.
 - ii. A new street light and non-tower supporting structure is likely to be approved if it is sited in a location that lacks light after dark or if it replaces an existing street light that is not functioning, outdated, dangerous, structurally unsound, or otherwise in need of replacement.
 4. Collocation on an existing non-tower supporting structure with all transmission equipment and the antenna above ground but attached to the existing non-tower supporting structure in a manner to conceal all of the equipment and match the new wireless communications facility to the existing non-tower supporting structure.
 5. Installation of a new tower (for the sole purpose of supporting FCC licensed or authorized antennas and their associated transmission equipment or facilities).
- (c) *Prohibited design and siting.* It is a basis for denial of an application for a new wireless communications facility if the department of transportation and engineering determines that its location or design:
1. Includes a tower or base station situated directly in front of the view of a residential or business window or door;

2. Includes a tower that can support wireless communications facilities for only one provider;
3. Includes an above-ground equipment cabinet larger than 8 cubic feet;
4. Would cause more than one wireless communication facility support structure in the same city block;
5. Includes installation of a tower greater than 30 feet in height or 12 inches in width;
6. Includes installation of a equipment cabinet greater than ___ feet in height or ___ inches [feet?] in width;
7. Is a collocation that would add more than 10% or ten feet in height, whichever is greater, or 6 feet in width to an eligible facility in the right-of-way;
8. Is a collocation that would defeat the existing concealment elements of the eligible facility;
9. Is a collocation that would violate a condition of prior approval of the eligible facility, if the condition does not otherwise conflict with the FCC standards for a substantial change or modification;
10. Is a collocation that would create any risk of over burdening the existing eligible facility or non-tower supporting structure from a structural engineering perspective;
11. Is a collocation on a pole supporting traffic signals or pedestrian signals; or
12. Would emanate sound that is plainly audible above ambient noise levels.

(d) *Concealment methods.* The department of transportation and engineering will receive and consider but does not guarantee approval of creative designs for hiding or cloaking wireless communications facilities. Generally, standalone equipment cabinets absent significant concealment design will not be approved, but neither are they completely prohibited. The director of the department of transportation and engineering shall maintain discretion to approve above-ground equipment cabinets without concealment.

(e) *Detailed design guidelines and examples.* The department of transportation and engineering shall promulgate additional detailed design guidelines for the design and installation of wireless communications facilities in the ROW, which the department shall consider in reviewing an application. Those detailed guidelines accord with this

section but provide greater detail, description, and examples of acceptable wireless facilities including visual depictions.

The department of transportation and engineering has authority to supplement the detailed design guidelines and examples as long as the detailed design guidelines continue to conform with the design standards established in this chapter of the Cincinnati Municipal Code.

The department of transportation and engineering may modify the detailed design guidelines and examples in order to help applicants understand what designs and siting methods for wireless communications facilities are acceptable.

In the event of any conflict between the detailed design guidelines and examples, and the design standards articulated in this chapter of the Cincinnati Municipal Code, the language of this chapter supersedes the language of the detailed design guidelines and examples.

Sec. 719-13. - Payments to City.

- (a) *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the use of city property as a result of an applicant's use or occupation of the ROW, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority. No rental payment or RSP fee shall constitute a payment in lieu of any tax, fee, or other assessment, except as specifically provided in this chapter or as required by applicable law.
- (b) *Use of revenue under this chapter.* All costs recovered under this chapter shall be used to reimburse the department of transportation and engineering for its costs incurred in responding to applications and monitoring installation and maintenance of wireless communications facilities in the ROW pursuant to this chapter. All revenue generated from allowing collocation of wireless communications facilities on city-owned non-tower supporting structures in the ROW, after recovery of costs incurred in management and monitoring of such structures and facilities, shall be used for improving, updating, and maintaining communication technology in the city government.

Sec. 719-15. - Maintenance Requirements.

- (a) *Prevention of Failures and Accidents.* Any person who owns a wireless communications facility sited in the ROW shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

- (b) *Compliance with Fire Safety and FCC Regulations.* Wireless communications facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (c) *Good Condition Required.* Wireless communications facilities shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.
- (d) *Removal if Discontinued Use.* In the event that the use of a wireless communications facility is discontinued, the owner shall provide written notice to the city of its intent to discontinue use and the date when the use shall be discontinued. If such wireless communications facility is not removed within ninety (90) days, the city may remove it at the owner's expense.
- (e) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the city a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this section. The bond or equivalent financial method must specifically cover the cost of removal of each wireless communications facility which the owner installs in the ROW in case the city has to remove or pay for removal of the wireless facility. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

Sec. 719-17. - Nonconforming wireless communications facilities.

Any wireless communications facility sited in the ROW that is legally in existence on the date of the adoption of this chapter but that does not comply with the requirements of this chapter shall be permitted to remain in the ROW but shall be considered a nonconforming wireless communications facility and shall be subject to the following provisions:

- (a) The owner of a nonconforming wireless communications facility in the ROW must obtain a revocable street privilege within 90 days of the enactment of this chapter in order to memorialize the existence of the nonconforming facility and the fact that permission for the siting of the nonconforming facility is revocable.
- (b) An owner may repair a nonconforming wireless communications facility in order to improve the structural integrity of the facility without being required to make the nonconforming facility conform to the provisions of this chapter, so long as the repair or improvement does not constitute a substantial modification to the nonconforming facility as defined in this chapter, and as long as setbacks around the nonconforming facility are not decreased by more than 10% of the originally approved setbacks.
- (c) An owner may modify a nonconforming wireless communications facility to allow it to accommodate collocation of additional wireless communications facilities, or to

upgrade the facility to current engineering, technological, or communication standards, without having to conform to the provisions of this chapter, so long as the modification to the facility does not constitute a substantial modification, and as long as the setback distance is not decreased by more than 10% of the originally approved setback distance.

- (d) If a nonconforming wireless communications facility is hereafter damaged or destroyed beyond repair, the owner may rebuild a new wireless communications facility, but the new facility must be designed in accordance with all provisions of this chapter of the Cincinnati Municipal Code and the design guidelines and examples promulgated by the department of transportation and engineering.
- i. The owner's application to replace the previous nonconforming facility will be given preference over other persons applying for siting of wireless communications facilities in the same area.
 - ii. The owner must apply for siting of the new wireless communications facility in a reasonable time after the damage or destruction to the nonconforming facility.

Sec. 719-19. - Severability.

The provisions of any part of this chapter are severable. If any provision or subsection – or the application of any provision or subsection to any person or circumstances – is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

Sec. 719-99. - Penalties.

- (e) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach or maintain any wireless communications facility in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a Class D Civil Offense as defined by section 1501-9(a) of the Cincinnati Municipal Code each day during the period such violation continues.
- (f) If any wireless communications facility is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the city, in addition to other remedies, may institute in the name of the city any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment,

or use, to restrain, correct, or abate such violation, to prevent the use of such facility, and/or to prevent any illegal act, conduct, business, or use in or about such facility.

Section 2. That the City Manager and his or her designee are hereby authorized to take all actions necessary and proper to implement the regulatory guidelines established in this ordinance.

Section 4. That the detailed design guidelines and examples for wireless communications facilities in the ROW attached to this ordinance as Exhibit A, promulgated by the Director of the Department of Transportation and Engineering and subsequently approved by the City Planning Commission, are hereby approved by Council.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the need to implement the new regulations and standards so that applicants and relevant City departments can take action to address pending requests in accordance with the new design and location standards as soon as possible.

Passed: _____, 2016

John Cranley, Mayor

Attest: _____
Clerk