

ORDINANCE NO. 38-2018

To Enact New Chapter 955 “Small Cell Technology in the Right of Way” of the Codified Ordinances of the City of Worthington.

WHEREAS, the General Assembly recently enacted H.B. 478 regarding the regulation and placement of small cell technology in municipal right of ways; and,

WHEREAS, the purpose of this Ordinance is to establish general procedures and standards, consistent with H.B. 478 and all applicable federal, state, and local laws, for small cell technology in the City’s right of way and to ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations; and,

WHEREAS, the City seeks to enhance the ability of wireless communications carriers to deploy small cell wireless technology in the City quickly, effectively and efficiently so that residents, businesses and visitors benefit from ubiquitous and robust wireless service availability while still preserving the character of the City’s neighborhoods and corridors; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That Part Nine of the Codified Ordinances of the City of Worthington, “Streets, Utilities, and Public Services Code,” be and the same is hereby amended to add new Chapter 955 “Small Cell Technology in the Right of Way” to read as follows:

**CHAPTER 955**  
**Small Cell Technology in the Right of Way**

**955.01 DEFINITIONS**

(A) General use of terms.

(1) The terms, phrases, words, and their derivations used in this Chapter shall have the meanings given in this section.

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

(B) Defined terms.

(1) *Abandoned* means any Small Cell Facilities or Wireless Support Structures that are unused for a period of three hundred sixty-five days without the Operator otherwise notifying the City and receiving the City’s approval.

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(2) *Antenna* means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

(3) *Applicant* means any Person applying for a Small Cell Permit hereunder.

(4) *City* means the City of Worthington.

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

(6) *Decorative Pole* means a pole, arch, or structure other than a street light pole placed in the Right of Way to specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following (a) electric lighting; (b) specially designed informational or directional signage; (c) temporary holiday or special event attachments.

(7) *Design Guidelines* means those detailed design guidelines, specifications and examples adopted by the City Council pursuant to Section 955.04 for the design and installation of Small Cell Facilities and Wireless Support Structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations.

(8) *Operator* means a wireless service provider, cable operator, or a video service provider that operates a Small Cell Facility and provides wireless service. *Operator* includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. 153(2), and services that are fixed in nature or use unlicensed spectrum.

(9) *Permittee* means the owner and/or Operator issued a Small Cell Permit pursuant to these Chapter and the Design Guidelines.

(10) *Person* means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

(11) *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 compatible public use, which is owned or controlled by the City of Worthington.

(12) *Small Cell Facility* means a Wireless Facility that meets both of the following requirements:

(a) Each Antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.

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

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(13) *Small Cell Permit* means the non-exclusive grant of authority issued by the City of Worthington to install a Small Cell Facility and/or a Wireless Support Structure in a portion of the Right of Way in accordance with these guidelines.

(14) *Utility Pole* means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and Decorative poles.

(15) *Wireless Facility* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

- (a) Equipment associated with wireless communications;
- (b) Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- (c) The term does not include any of the following:
  - (i) The structure or improvements on, under, or within which the equipment is Collocated;
  - (ii) Coaxial or fiber-optic cable that is between Wireless Support Structures or Utility poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.

(16) *Wireless Support Structure* means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or Utility pole capable of supporting Small Cell Facilities. *Wireless Support Structure* excludes (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) *Wireline Backhaul Facility* means a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

### **955.02 GENERAL REQUIREMENTS**

(A) General Requirements. The following requirements shall apply to all Small Cell Facilities and Wireless Support Structures proposed within the Right of Way.

(1) No Person shall occupy or use the Right of Way except in accordance with law.

(2) In occupying or using the Right of Way, no Person shall unreasonably compromise the public health, safety, and welfare.

(3) No Person shall occupy or use the Right of Way without first obtaining, under this chapter, Chapter 949, or section 1332.24 or 4939.031 of the Ohio Revised Code, any requisite consent of the City. Before placing Small Cell Facilities or Wireless Support Structures in the Right of Way, an Operator must apply for and receive a general right of way permit under Chapter 949. If the Operator's activities in the Right of Way will consist solely of Collocating Small Cell Facilities, constructing, modifying, or replacing new Wireless Support Structures and associated Small Cell Facilities, removing such

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facilities, or eligible facilities requests as defined by the Federal Communications Commission, then the Operator shall not be required to pay the annual fee for holders of a right of way permit provided in Chapter 949. This provision shall not be construed to waive application fees or any other construction or work permit necessary for work in the City.

(B) The permitting procedures and authorizations set forth herein in this chapter shall apply only to Small Cell Facilities and Wireless Support Structures in the Right of Way, and do not authorize the construction and operation of a Wireline Backhaul Facility, which continues to be governed by Chapter 949.

(C) Nothing in this chapter precludes the City from applying its generally applicable health, safety, and welfare regulations when granting consent for a Small Cell Facility or Wireless Support Structure in the City's Right of Way.

### **955.03 APPLICATION AND APPROVAL PROCESS**

(A) Pre-Application Conference.

(1) The City requires pre-submittal conferences to meet with potential Applicants and discuss projects on a conceptual level. The conference is intended to identify the correct application type and content requirements for any given project, and also to create an informal forum in which Applicants and the City can discuss any concerns that should be addressed as soon as possible to avoid any unnecessary delays in the processing of an application and deployment of wireless facilities in the City. The requirement for a pre-submittal conference may be waived by the Director of Service & Engineering or designee based on necessity and prior experience with the Applicant.

(2) An appointment is required for all pre-submittal conferences. The Director of Service & Engineering may establish regular hours in which appointments are available and the number of potential projects that may be discussed at a pre-submittal conference.

(B) Application Required. Prior to installation, modification, relocation or removal of a Small Cell Facility, relocation or removal of an existing Wireless Support Structure, installation of a new Wireless Support Structure, or Collocation on an existing Wireless Support Structure in the Right of Way, the Operator shall apply to the City and receive approval from the City. Prior to submitting such application, the Applicant must possess a Telecommunications and Utilities Permit, as required by the City's Codified Ordinances Chapter 949, Section 949.03.

(C) Required Application Materials. Unless otherwise required by state or federal law, the application shall be submitted to the Department of Service & Engineering with the applicable fee and all required materials and information in accordance with the requirements of this Chapter and the Design Guidelines in order for the application to be considered complete.

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(D) Application Processing Fee. For processing an application for consent, the City may charge a fee for each Small Cell Facility and Wireless Support Structure requested as prescribed under section 4939.0316 of the Ohio Revised Code and as listed on the associated application forms which shall be made available by the Department of Service & Engineering. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

### **955.04 DESIGN GUIDELINES**

(A) City Council shall adopt by resolution detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the City shall consider in reviewing an application:

- (1) The location of any ground-mounted Small Cell Facilities;
- (2) The location of a Small Cell Facility on a Wireless Support Structure;
- (3) The appearance and concealment of Small Cell Facilities, including those relating to materials used for arranging, screening, and landscaping;
- (4) The design and appearance of a Wireless Support Structure.

(B) The provisions in this section shall not limit or prohibit the discretion of the City Manager or Director of Service & Engineering to promulgate and make publicly available other information, materials, forms, or requirements in addition to, and separate from, the Design Guidelines so long as the information, materials, forms, or requirements do not conflict with this Chapter or other applicable state or federal law.

(C) Waiver of Guidelines. In the event that strict compliance with any provision in these guidelines, as applied to a specific proposed Small Cell Facility, would effectively prohibit the provision of personal wireless services, the City Manager may grant a limited, one-time exemption from strict compliance.

### **955.05 SAFETY REQUIREMENTS**

(A) Prevention of failures and accidents. Any Person who owns a Small Cell Facility and/or Wireless Support Structure sited in the Right of Way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

(B) Compliance with fire safety and FCC regulations. Small Cell Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.

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(C) Changes in state or federal standards and regulations. If state or federal standards and regulations are amended, the owners of the Small Cell Facilities and/or Wireless Support Structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring Small Cell Facilities and/or Wireless Support Structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

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

(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 Chapter. The bond must be maintained for as long as the owner has Small Cell Facilities and/ or Wireless Support Structures located in the Right of Way. The bond or equivalent financial method must specifically cover the cost of removal of unused or Abandoned Small Cell Facilities and/ or Wireless Support Structures or damage to City property caused by an Operator or its agent of each Small Cell Facility and/ or Wireless Support Structure in case the city has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

### **955.06 INSTALLATION AND INSPECTION**

(A) (1) Completion within 180 days. The Collocation or new Wireless Support Structure for which a Small Cell Permit is granted shall be completed within 180 days after issuance of the Small Cell Permit unless the City and the Applicant agree to extend this period. The City will agree to an extension if the delay is caused by (a) make-ready work for a City-owned Wireless Support Structure, or (b) the lack of commercial power or backhaul availability at the site, provided that the Operator has made a timely request within sixty (60) days after the issuance of the Small Cell Permit for commercial power or backhaul services. The additional time to complete installation may not exceed a total of 360 days after the issuance of the Small Cell Permit.

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(2) Procedure for request for extension of time. In situations when completion will not occur within 180 days after issuance of the Small Cell Permit, the Applicant may request an extension of time. Such extension request must be completed utilizing the City's extension of time form, which will include the length of time being requested and the reason for the delay. The extension must be filed with the Department of Service & Engineering.

(B) Requirement for work permit. Prior to commencing work in the Right of Way, the Applicant must obtain a right of way work permit from the Director of Service & Engineering as required in Section 949.06 (c). In most instances, this work permit will be able to be issued in conjunction with and utilizing the materials included for an application for Small Cell Permits issued under this Chapter. Once the work authorized by the right of way work permit commences, it should be completed within 45 days.

### **955.07 GENERAL PROVISIONS**

(A) As-Built Maps and Records.

(1) Operator shall maintain accurate maps and other appropriate records, including an inventory, of its Small Cell Facilities and Wireless Support Structures as they are actually constructed in the Right of Way or any other City-owned property. The inventory shall include GIS coordinates, date of installation, type of Wireless Support Structure used for installation, Wireless Support Structure owner and description/type of installation for each Small Cell Facility and Wireless Support Structure.

(2) Upon City's written request, Operator shall provide a cumulative inventory within thirty (30) days of City's request. Concerning Small Cell Facilities and Wireless Support Structures that become inactive, the inventory shall include the same information as active installations in addition to the date the Small Cell Facility and/or Wireless Support Structure was deactivated and the date the Small Cell Facility and/or Wireless Support Structure was removed from the Right of Way. The City may compare the inventory to its records to identify any discrepancies.

(B) Generally Applicable Health and Safety Regulations. All Small Cell Facilities and Wireless Support Structures shall be designed, constructed, operated and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions.

### **955.08 ANNUAL COLLOCATION FEE**

For each attachment of a Small Cell Facilities to a Wireless Support Structures owned or operated by the City and located in the Right of Way, the City may charge the Operator an annual fee as prescribed in 4939.022 of the Ohio Revised Code and as listed on associated application forms which shall be made available by the Department of Service

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& Engineering. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

**955.09 LIABILITY AND SIGNAL INTERFERENCE**

(A) No Liability. The City shall not be liable to the Operator by reason of inconvenience, annoyance or injury to the Small Cell Facilities, Wireless Support Structures, and related ground or pole-mounted equipment or activities conducted by the Operator therefrom, arising from the necessity of repairing any portion of the Right of Way, or from the making of any necessary alteration or improvements, in or to, any portion of the Right of Way, or in, or to, City's fixtures, appurtenances or equipment.

(B) Signal Interference Prohibited. In the event that an Operator's Small Cell Facility interferes with the public safety radio system, or the City's or State of Ohio's traffic signal system, then the Operator shall, at its cost, immediately cooperate with the City to either rule out Operator as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

**955.10 REQUIREMENTS FOR REMOVAL, REPLACEMENT, MAINTENANCE AND REPAIR**

(A) Replacement of Municipal-Owned Wireless Support Structure.

(1) When necessary to accommodate Small Cell Facility. The City may require, in response to an application to Collocate a Small Cell Facility on a City-owned Wireless Support Structure, the replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with construction and safety standards. Such replacement or modification shall conform to these Design Guidelines. The City may retain ownership of the replacement or modified Wireless Support Structure.

(2) Accommodation of reservation of space for future public safety or transportation uses. If the City has reserved space for future public safety or transportation uses on the City-owned Wireless Support Structure, the replacement or modification must accommodate the future use.

(B) Removal or Relocation Required for City Project.

(1) Operator shall remove and relocate the permitted Small Cell Facility and/or Wireless Support Structure at the Operator's sole expense to accommodate construction of a public improvement project by the City.

(2) If Operator fails to remove or relocate the Small Cell Facility and/or Wireless Support Structure or portion thereof as requested by the City within 120 days of the City's notice, then the City shall be entitled to remove the Small Cell Facility and/or

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Wireless Support Structure, or portion thereof at Operator's sole cost and expense, without further notice to Operator.

(3) Operator shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Small Cell Facilities and/or Wireless Support Structure, or portion thereof.

### (C) Removal Required by City for Safety and Imminent Danger Reasons.

(1) Operator shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Small Cell Facility and/or Wireless Support Structure within the time frame and in the manner required by the City if the City reasonably determines that the disconnection, removal, or relocation of any part of a Small Cell Facility and/or Wireless Support Structure (a) is necessary to protect the public health, safety, welfare, or City property, or (b) Operator fails to obtain all applicable licenses, permits, and certifications required by law for its Small Cell Facility and/or Wireless Support Structure.

(2) If the City Manager reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove, or relocate the applicable Small Cell Facility and/or Wireless Support Structure at the Operator's sole cost and expense.

### (D) Removal/Abandonment of Facilities.

(1) Operator shall remove Small Cell Facilities and/or Wireless Support Structures when such facilities are Abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the Small Cell Facility and/or Wireless Support Structure being Abandoned, or within 60 days of receipt of written notice from the City. When Operator abandons permanent structures in the Right of Way, the Operator shall notify the City in writing of such abandonment and shall file with the City the location and description of each Small Cell Facility and/or Wireless Support Structure Abandoned. Prior to removal, Operator must make application to the City and receive approval for such removal. Operator must obtain a right of way work permit for the removal. The City may require the Operator to complete additional remedial measures necessary for public safety and the integrity of the Right of Way.

(2) The City may, at its option, allow a Wireless Support Structure to remain in the Right of Way and coordinate with the owner to transfer ownership of such Wireless Support Structure to the City, instead of requiring the owner and/or Operator to remove such Wireless Support Structure.

(E) Restoration. Operator shall repair any damage to the Right of Way, any facilities located within the Right of Way, and/or the property of any third party resulting from

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Operator's removal or relocation activities (or any other of Operator's activities hereunder) within ten (10) calendar days following the date of such removal or relocation, at Operator's sole cost and expense. Restoration of the Right of Way and such property must be to substantially the same condition as it was immediately before the date Operator was granted a Small Cell Permit for the applicable location, or did the work at such location (even if Operator did not first obtain a Small Cell Permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City.

### **955.11 RULE MAKING AUTHORITY**

The Director of Service & Engineering is hereby authorized to promulgate additional rules and regulations, including but not limited to the adoption of forms and application submittal requirements, to carry out the purpose and intent of this Chapter in order to protect the public health, safety and welfare. Such rules, and amendments thereto, shall be consistent with these Codified Ordinances, and shall be subject to the approval of the City Manager.

### **955.12 EFFECT OF PARTIAL INVALIDITY**

The provisions of this Chapter are hereby declared to be severable, and if any section, subsection, or clause of this Chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Chapter that can be given effect.

### **§955.99 PENALTY**

(A) For failure to comply with any provision of this Chapter or the Design Guidelines, the penalty shall be a civil forfeiture, payable to the City, in the amount of \$250 per day for each day the violation continues.

(B) In addition to the civil forfeiture in division (A), the City may also pursue the remedies of revocation of the Small Cell Permit or specific performance of the violated provision.

(C) The City Manager may excuse violations of this Chapter for reasons of Force Majeure.

(D) For purposes of this section, "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies, or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the Permittee, but only to the extent the disabled

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party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.

SECTION 2. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed July 9, 2018

/s/ Bonnie D. Michael  
President of Council

Attest:

/s/ D. Kay Thress  
Clerk of Council

Introduced July 2, 2018  
P.H. July 9, 2018  
Effective August 1, 2018