



Text File

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Committee: Committee on Public Works

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Ordinance amending and supplementing the Pittsburgh City Code, Title 4: Public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by amending and supplementing language to Sections 427.03, 427.06, 427.07, 427.09, 427.11, 427.16, 427.19, and 427.20, establishing certain general and specific standards relating to the location, placement, construction and maintenance of Non-Tower Wireless Communications Facilities, and Small Cell Facilities; establishing certain general and specific standards for Wireless Communication Facilities in the public rights-of-way; establishing certain general and specific standards for Wireless Communications Facilities outside the public rights-of-way; providing for definitions; providing for the enforcement of said regulations; and providing for an effective date.

WHEREAS, the City of Pittsburgh (“City”) regulates telecommunications systems, which include small cell facilities, in the City rights-of-way via Title Four, Article II, Chapter 427 “Telecommunications Systems in the Right-of-Way” of the City Code; and

WHEREAS, regulation by local governments of the deployment of such small cell facilities is governed by certain federal and state laws and regulations; and

WHEREAS, the Pennsylvania General Assembly recently enacted PA Act 50, entitled the “Small Wireless Facilities Deployment Act,” which imposes additional restrictions on the regulation of such small cell facilities located in the public rights-of-way by municipalities in the Commonwealth of Pennsylvania; and

WHEREAS, PA Act 50 specifically requires the amendment of any local ordinances that are inconsistent with the Act, stating in Section 7(a) thereof that:

(a) Ordinances. -- A municipality may adopt ordinances that comply with this act and shall amend existing ordinances as necessary to comply with this act; and

WHEREAS, the City has determined that it must adopt certain amendments to the provisions of Chapter 427 of the City Code that regulate small cell facilities in the City rights-of-way in order to comply with the requirements of PA Act 50; and

WHEREAS, the City has prepared such amendments to Chapter 427 of the City Code in order to regulate the deployment of small cell facilities in the City rights-of-way in compliance with the applicable requirements of PA Act 50;

The Council of the City of Pittsburgh hereby enacts as follows:

Section 1. Amending the Pittsburgh City Code, Title 4: Public Place and Property, Article II:

Telecommunications in the Public Right-of-Way, by amending language to Section 427.03 as follows:

SEE ATTACHMENT

§ 427.03 - DEFINITIONS.

(a) For the purposes of this Chapter and any ROW Use Agreement in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided in this Chapter, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of Council.

(1) ACCESSORY EQUIPMENT. Any equipment serving or being used in conjunction with a small cell facility, including but not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

(2) ANTENNA. Any apparatus designed for telephonic, data, radio, or television communications through the sending and/or receiving of electromagnetic waves.

(3) APPROVAL AUTHORITY. The Director of the Department of Mobility and Infrastructure, or his or her designee, who has authority under Chapters 412 - Users of the Public Rights-of-Way, and 427 - Telecommunications Systems in the Right-of-Way, of the City of Pittsburgh Code to administratively issue project permit approvals or enter into ROW Use Agreements on behalf of the interests of the City.

(4) ~~APPLICANT. The person, and such person's successor in interest, owning and/or operating the transmission equipment proposed in an eligible facilities modification application to be collocated, removed or replaced.~~

(5) AUTHORIZED PERSON. The person, employees, agents, consultants, and contractors, authorized in writing by applicant to complete and submit an eligible facilities modification application on behalf of applicant and who is authorized to receive any notices on behalf of

applicant of any action taken by the City regarding the application.

(6) **BASE STATION.** The structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a tower as defined in this Chapter or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the City under this Chapter, supports or houses equipment described in paragraphs (i), (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another state, county or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time a completed eligible facilities modification application is filed with the City under this Section, does not support or house equipment described in paragraphs (i), (ii) above.

(7) **CABLE COMMUNICATIONS SYSTEM.** A nonbroadcast facility consisting of a set of transmission paths with associated signal generation, reception and control equipment, under common ownership and control, which distributes or is designed to distribute to Subscribers the

signals of one (1) or more television broadcast stations and is franchised by the City in accordance with Chapter 425 of the Pittsburgh Code of Ordinances.

- (8) CBD. Central Business District, specifically that portion of the City of Pittsburgh bordered by the Allegheny River on the north, the Monongahela River on the south, Interstate 579, Bigelow Boulevard, Crawford Street, Fifth Avenue and the Liberty Bridge on the east, and the Ohio River on the west; or as otherwise defined by the Department of City Planning of the City.
- (9) CITY. City of Pittsburgh, a home-rule charter municipality of the second class, situated in the County of Allegheny, in the Commonwealth of Pennsylvania.
- (10) ~~CO-LOCATION~~ COLLOCATION or COLLOCATE. To install, mount, maintain, modify or replace small cell facilities on an existing Utility Pole or other Wireless Support Structure. . The mounting or installation of one (1) or more wireless communications facilities as defined herein, including but not limited to, transmission equipment and/or antenna, on an existing tower, utility pole, light pole, and/or any eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.
- (11) COMMUNICATIONS SERVICE PROVIDER. Any of the following:
- (i) A cable operator as defined in section 602(4) of the Cable Communications Policy Act of 1984 (Public Law 98-549, 47 U.S.C. § 522(5)).
 - (ii) A provider of information service as defined in section 3(20) of the Communications Act of 1934 (48 Stat. 1064, 47 U.S.C. § 153(24)).
 - (iii) A telecommunications carrier as defined in section 3(44) of the Communications Act of 1934 (47 U.S.C. § 153(51)).

- (iv) A wireless provider.
- (12) CONCEAL or CONCEALMENT. Eligible support structures and transmission facilities designed to look like some feature other than a wireless tower or base station, including but not limited to alternative antenna support structures as defined in Chapter 926 (5.1).
- (13) CUSTOMER. A person who for a charge or payment of a fee receives, sends or uses any signal or service provided, collected or distributed by a telecommunications system duly authorized by the City.
- (14) DISTRIBUTED ANTENNA SYSTEMS (DAS). Network of spatially separated antenna sites connected to a common source that provides wireless service within a geographic area or structure.
- (15) DIRECTOR. The Director of the Department of Mobility and Infrastructure.
- (16) EMERGENCY. A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.
- (17) ELIGIBLE FACILITIES REQUEST. Any request for modification of an existing WCF that does not constitute a Substantial Change to the physical dimensions of such tower or base station, involving: (1) Collocation of new transmission equipment; (2) Removal of transmission equipment; or (3) Replacement of transmission equipment.
- (18) ELIGIBLE SUPPORT STRUCTURE. Any existing tower or base station as defined in this Chapter, provided that it is in existence at the time the eligible facilities modification application is

filed with the City under the Zoning Code, Chapter 901 et seq.

- (19) EXISTING. For purpose of this Chapter and as applied to a tower or base station, mean and refer to a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process of the City, or under another Commonwealth, county or local regulatory review process; provided that, a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.
- (20) FCC. The United States Federal Communications Commission or its legally appointed successor.
- (21) LICENSE. For purposes of this Chapter 427, a license is a non-exclusive, personal privilege or permission with respect to some use of land, in particular rights-of-way, and is revocable at the will of the City. The privilege herein attaches only to the party holding it and not to the land itself because a license does not represent an estate or interest in the land.
- (22) LOCAL ACCESS TRANSPORT AREA (LATA). The geographic area in which the City is located and in which Verizon Communications and any other telecommunications companies are authorized by the Commonwealth of Pennsylvania Public Utilities Commission to provide local exchange access telecommunications services.
- (23) MICRO WIRELESS FACILITY. A small cell facility that:
- (i) Does not exceed two cubic feet in volume; and
 - (ii) Has an exterior antenna no longer than 11 inches.
- (24) MONOPOLE. A wireless communication facility or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications

antennae and connecting appurtenances.

- (25) ~~NON-TOWER WIRELESS COMMUNICATIONS FACILITY (COMMUNICATION ANTENNA). All non-tower wireless communications facilities, including but not limited to, antennae and related equipment. Communication Antenna shall not include support structures for antennae and related equipment.~~
- (26) PUBLIC WAY(S). The surface, the air above the surface, and the area below the surface within any public right-of-way and any street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, lane, square, viaduct, waterway or other public right-of-way including public utility easements or rights-of-way in which the City has jurisdiction; and any other public ground or water within belonging to the City.
- (27) RIGHTS-OF-WAY (ROW). The surface and space above and below any real property in which the City has an interest in law or equity, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, swale, river, tunnel, viaduct, bridge, park, or any other place, area, or real property, other than real property owned in fee by the City.
- (28) ROW USE AGREEMENT. The privilege granted by the City by which the City authorizes a person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a private communications system that occupies the rights-of-way, streets, public ways or public places within the City. Any ROW Use Agreement issued in accordance herewith shall be a nonexclusive license.
- (29) ROW USER. The person or its legal successor in interest who is issued a ROW Use Agreement or licenses in accordance with the provisions of this Chapter for the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a telecommunications system in the City.
- (30) SITE. The current boundaries of the leased, licensed or owned property surrounding a tower and any access or utility easements currently related to the site, and, for other eligible support structures,

shall mean and be further restricted to, that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(31) SMALL CELL FACILITY. The equipment and network components, including Antennas, transmitters and receivers, used by a wireless provider that meet the following qualifications:

- (1) Each antenna associated with the deployment is no more than three cubic feet in volume
Each antenna associated with the deployment is cumulatively is located inside an antenna enclosure of no more than three cubic feet in volume; and
- (2) The volume of all other equipment associated with the small cell facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet. Any equipment used solely for the concealment of the small cell facility shall not be included in the calculation of equipment volume under this paragraph.

~~A wireless communications facility that meets the following criteria:~~

~~(i)The structure on which antenna facilities shall be mounted must comply with aesthetic guidelines adopted by the City of Pittsburgh Commission on Art and Public Space, subject to applicable law;~~

~~(ii)All wireless equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume.~~

~~(iii)The facilities do not require antenna structure registration under 47 CFR Part 17;~~

~~(iv)The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).~~

~~(v) Each antenna is located inside an antenna enclosure of no more than three (3) 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 imaginary enclosure of no more than three (3) cubic feet; and~~

~~(vi) Primary equipment enclosures may not exceed the volume established by uniform construction standards adopted by the Department of Mobility and Infrastructure. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.~~

- (32) SMALL CELL NETWORK. A collection of interrelated small cell facilities designed to deliver personal wireless services.
- (33) STEALTH TECHNOLOGY. Camouflaging and concealment methods applied to wireless Tower-Based WCFs, antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
- (34) STREET. Any area established for vehicular or public access use or the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public purposes. Street includes, but is not limited to, highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parks, parkways, waterways, docks, overheads, wharves and piers.
- (35) SUBSTANTIAL CHANGE. A modification substantially changes the physical dimensions of a support structure if it meets the criteria established by 47 CFR §1.6100.
- (36) TECHNICALLY FEASIBLE. By virtue of engineering or spectrum usage, the proposed

placement for a small wireless facility or its design or site location can be implemented without a material reduction in the functionality of the small wireless facility.

- (37) TELECOMMUNICATIONS SYSTEM. Any communications equipment or facilities, not part of the LATA or part of a cable communications system franchised by the City, that in any manner is connected with the streets, public ways or public places within the corporate limits of the City, as now or in the future may exist.
- (38) TOTAL LOCAL GROSS REVENUES. All cash, credits or property of any kind or nature reported as revenue items on ROW user's audited income statements arising from or attributable to the sale or exchange of telecommunications services by the ROW user within the City or in any way derived from the operation of its telecommunications system, including, but not limited to, any interconnection between its system in the City and any system whatsoever. This sum shall be the basis for computing the fee imposed pursuant to this Chapter. The sum shall not include any bad debts, deposits, promotional or vendor discounts or credits nor sales, service, occupation or other excise tax to the extent that such taxes are charged separately from normal service charges and are remitted by the ROW user directly to the taxing authority.
- (39) TOWER. Any structure built for the sole or primary purpose of supporting any antennas, including but not limited to, self-supporting lattice towers, guy towers, or monopole towers and their associated facilities, licensed or authorized by the FCC, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.
- (40) TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (TOWER-BASED WCF). A tower and its supporting antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. DAS hub facilities are considered to be tower-based WCFs.
- (41) TRANSMISSION EQUIPMENT. Equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, including, but not limited to, radio

transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. As used throughout this Chapter, the term is excluded from the definition of equipment.

- (42) UTILITY POLE. A pole or similar structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function or for collocation. The term includes the vertical support structure for traffic lights but does not include wireless support structures or horizontal structures to which signal lights or other traffic control devices are attached.
- (43) WIRELESS. Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.
- (44) WIRELESS COMMUNICATIONS FACILITY (WCF). The antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services.
- (45) WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF APPLICANT). Any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public ROW or other City-owned land or property.
- (46) WIRELESS SUPPORT STRUCTURE. A freestanding structure, such as a guyed or self-supporting monopole or tower, electrical transmission tower, water tower or other structure not classified as a wireless support structure, that could support the placement or installation of wireless telecommunications facilities if approved by the City.

Section 2. Amending the Pittsburgh City Code, Title 4: public Place and Property, Article II:

Telecommunications in the Public Right-of-Way, by amending language to Section 427.06 as follows:

§ 427.06 - LENGTH OF ROW USE AGREEMENT.

- (a) Any ~~annual~~ ROW Use Agreement issued by the City in accordance herewith shall be a nonexclusive license for the use of the streets, public ways or public places within the City as specified in the ROW Use Agreement for the erection, construction, reconstruction, operation, maintenance, dismantling, testing and use of a telecommunications system.

- (b) Any ROW Use Agreement issued by the City may be renewable ~~annually~~ upon its expiration and upon establishment by the ROW user to the satisfaction of the City that the ROW user is in compliance with this Chapter, all applicable federal, state and local ordinances and regulations and the space occupied is not needed for a public purpose.

Section 3. Amending the Pittsburgh City Code, Title 4: public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by amending language to Section 427.07 as follows:

§ 427.07 - ROW USE AGREEMENT LOCATIONS.

- (a) Any ROW Use Agreement issued for a telecommunications system in accordance herewith shall apply only to the location or locations stated on the ROW Use Agreement or licenses.

- (b) Nothing in this Chapter shall be construed as a representation, promise or guarantee by the City that any permit or other authorization required under any City law for the construction or installation of a telecommunications system shall be issued.

- (c) ~~Co-location.~~
 - (1) ~~An application for a new tower-based WCF shall not be approved unless the City finds that the wireless communications equipment planned for the proposed tower-based WCF cannot be accommodated on an existing or approved structure or building. Any applicant proposing~~

construction of a new tower-based WCF outside the rights-of-way shall demonstrate to the satisfaction of the Director of the Department of Mobility and Infrastructure, by written submission that a good faith effort has been made to obtain permission to mount the tower-based WCF antenna on an existing building or structure. A good faith effort shall require that all owners of potentially suitable structures within a one-quarter ($\frac{1}{4}$) mile radius of the proposed tower-based WCF site be contacted and that the applicant certifies in writing to the appropriate approval authority, and/or Zoning Administrator, and/or Council, and/or their designee that one (1) or more of the following reasons for not selecting such structure apply:

- (i) The proposed WCF and related equipment would exceed the structural capacity of the existing structure and its reinforcement cannot be accomplished at reasonable cost;
- (ii) The proposed WCF and related equipment would cause radio frequency interference with other existing equipment for that existing structure and the interference cannot be prevented at reasonable cost;
- (iii) Such existing structure does not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function; and/or
- (iv) A commercially reasonable agreement cannot be reached with the owner(s) of such structure. For purposes of this paragraph, commercially reasonable means terms and pricing that are reasonably consistent with similar wireless facility leases and agreements within a fifty (50) mile radius of the City.

Section 4. Amending the Pittsburgh City Code, Title 4: public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by amending language to Section 427.09 as follows:

§ 427.09 - POWERS AND DUTIES OF DIRECTOR.

The Director of the Department of Mobility and Infrastructure or his/her designee shall have the following powers and duties:

- (a) Receive and review applications for ROW Use Agreements for any telecommunications system;
- (b) Review and audit all reports and filings submitted by the ROW user to the City pursuant to this Chapter;
- (c) Establish regulations regarding the construction, reconstruction, operation, maintenance, dismantling, testing or use of any telecommunications system or Small Cell Network established by a ROW Use Agreement;
- (d) ~~Establish fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for right-of-way use agreements for the use of public ways and/or rights-of-way on a nondiscriminatory basis consistent with and pursuant to 47 U.S.C.A. § 253 (e) (June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.), or as hereinafter amended;~~ Receive, review and approve or deny applications for Small Cell Facilities;
- (e) ~~Subject to City Council approval, establish fees for permits, registration and other administrative fees relating to telecommunications providers herein or throughout the Pittsburgh Code of Ordinances; and~~ Establish fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for right-of-way use agreements for the use of public ways and/or rights-of-way on a nondiscriminatory basis consistent with and pursuant to 47 U.S.C.A. § 253 (c) (June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.), or as hereinafter amended; and
- (f) ~~Verify zoning compliance with the Department of City Planning.~~ Subject to City Council approval, establish fees for permits, registration and other administrative fees relating to telecommunications providers herein or throughout the Pittsburgh Code of Ordinances.

Section 5. Amending the Pittsburgh City Code, Title 4: public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by amending language to Section 427.11 as follows:

§ 427.11 - CONSIDERATION FOR ROW USE AGREEMENT.

It shall be a term and condition of any ROW Use Agreement issued in accordance herewith that as a part of the consideration supporting the issuance of such ROW Use Agreement and the City's permission thereby to occupy and use the streets of the City, that the ROW user shall pay each year to the City the following charges and ROW Use Agreement fees.

(a) The fees for telecommunications shall be established by the Director of Mobility and Infrastructure subject to approval by City Council, based on fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public ways and/or rights-of-way on a nondiscriminatory basis consistent with and pursuant to 47 U.S.C.A. § 253 (c) (June 19, 1934, c. 652, Title II, § 253, as added Pub.L. 104-104, Title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.), or as hereinafter amended. In particular, any telecommunications system which serves no customers other than itself shall pay charges and ROW Use Agreement fees as follows:

(1) Two dollars (\$2.00) per linear foot for each diameter inch or less of underground conduit or wire or each .250 diameter inch or less of aerial wire situated outside of the "CBD" and thereafter, said fee is to increase annually by two (2) percent rounded up to the nearest cent.

(2) Two dollars and fifty cents (\$2.50) per linear foot for each diameter inch or less of underground conduit or wire or each .250 diameter inch or less of aerial wire situated inside of the "CBD" and thereafter, said fee is to increase annually by two (2) percent rounded up to the nearest cent.

(3) In no event shall the fee be less than five hundred fifty dollars (\$550.00) per annum.

(b) Any telecommunications system, except for Small Cell Facilities, that serves customers within the City shall pay annually, five (5) percent of the annual total local gross revenues derived from the customers. ~~ROW Use Agreement fees for Small Cell Facilities shall be separately set by the City's Director of the~~

~~Department of Mobility and Infrastructure subject to the approval of City Council.~~

(e) ~~Any cable communications system or part thereof located in the City right-of-way and not franchised by the City in accordance with Chapter 425 shall obtain a ROW Use Agreement under this Chapter. The ROW Use Agreement shall be granted for the sole purpose of providing cable television signals to customers located in an adjoining municipality. The charges and ROW Use Agreement fees stated in subsection (a) hereof shall not apply provided that such adjoining municipality imposes no compensation and franchise fee requirements on any cable communications system or part thereof, franchised by the City in accordance with Chapter 425 which may be located in the adjoining municipality. ROW Use Agreement fees for Small Cell Facilities shall be separately set by the Director subject to the approval of City Council.~~

(d) ~~Any cable communications system or part thereof located in the City right-of-way and not franchised by the City in accordance with Chapter 425 shall obtain a ROW Use Agreement under this Chapter. The ROW Use Agreement shall be granted for the sole purpose of providing cable television signals to customers located in an adjoining municipality. The charges and ROW Use Agreement fees stated in subsection (a) hereof shall not apply provided that such adjoining municipality imposes no compensation and franchise fee requirements on any cable communications system or part thereof, franchised by the City in accordance with Chapter 425 which may be located in the adjoining municipality.~~

Section 6. Amending the Pittsburgh City Code, Title 4: public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by amending language to Section 427.16 as follows:

§ 427.16 - USE OF STREETS AND POLE ATTACHMENTS.

(a) Before commencing construction of its telecommunications system in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the City, the ROW user shall first ~~obtain the written approval of all appropriate City agencies, including, but not limited to, execute a valid ROW Use Agreement with~~ the Department of Mobility and Infrastructure. Applications for approval shall be made in the form prescribed by the Department of Mobility and Infrastructure.

(b) Upon obtaining written approval, the ROW user shall give the appropriate agency written notice within a reasonable time of proposed construction, but in no event shall the notice be given less than ten (10) days

before the commencement.

- (c) Any applicant who submits a request for a ROW Use Agreement in accordance herewith shall include therein proposed agreements for the use of existing utility poles and conduits, if applicable, with the owner (s) of the facilities to be used or affected by the construction of the proposed telecommunications system. Said proposed agreements for the use of existing utility poles and conduits shall become effective on the date of execution of the ROW Use Agreement issued in accordance herewith in the event that the person is issued a ROW Use Agreement.

- (d) It shall be unlawful for the ROW user or any other person to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining approval to do so after proceeding in the manner prescribed in subsections (a) and (b) hereof. Violation of this Section shall subject the ROW user to all penalties and remedies prescribed in this Chapter and to all other remedies, legal or equitable, which are available to the City, including but not limited to issuing citations and assessing penalties of up to three hundred dollars (\$300.00) per day per violation.

- (e) The ROW user shall restore any street or sidewalk it has disturbed in accordance with the provisions of Article I (Streets and Sidewalks) of Title Four-Public Places and Property, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good as the condition such property was in immediately prior to the disturbance, damage or injury or pay the fair market value of the property to its owner.

- (f) The ROW user shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any of its property when required to do so by the City because of street or other public excavation, construction, repair, regrading or grading; traffic conditions; installation of sewers, drains, water pipes, City owned power or signal lines or tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety or welfare.

- (g) Nothing in this Chapter or any ROW Use Agreement issued in accordance herewith shall be construed as authorizing the ROW user to erect and maintain new poles in areas serviced by existing poles. The ROW

user shall obtain written approval from the Department of Mobility and Infrastructure and other appropriate City agencies before erecting any new poles or underground conduits where none exist.

- (h) The ROW user shall maintain all wires, conduits, cables and other real and personal property and facilities in good condition, order and repair.
- (i) The ROW user shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, rights-of-way, public ways and public places within the City and shall furnish, as soon as they are available, two (2) complete copies of the maps and records, in a form approved by the approval authority, to the Department of Mobility and Infrastructure.
- (j) The ROW user shall comply with all rules and regulations issued by the Department of Mobility and Infrastructure governing the construction and installation of telecommunications systems. In addition:
- (1) All aerial cables and wires shall be installed parallel with existing telephone and electric utility wires. Where there are no existing telephone or electric utility wires, all new cables and wires should be placed underground, unless otherwise directed by the Director; and
 - (2) Multiple aerial configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations; and
 - (3) All underground installations shall be in the appropriate size and type conduit or other enclosures approved by the Director; and
 - (4) All installations shall be underground in those areas of the City where both telephone and electric utilities' facilities are underground at the time of the installation of the ROW user's telecommunications system. In areas where both telephone and electric utilities' facilities are above ground at the time of the installation of the ROW user's telecommunications system, the ROW user may install its system above ground on existing utility poles only, upon the condition that at such time as those facilities are placed

underground by the telephone and electric utility companies, the ROW user shall likewise place its facilities underground at its sole cost and expense.

- (5) The ROW user upon reasonable notice by the City shall temporarily or permanently remove, adjust, raise or lower its facilities within the right-of-way when the City determines that the action is needed for public use of the right-of-way including but not limited to the passage of nonstandard vehicles.
- (6) The ROW user shall obtain the written permission of the owner including the City of any tree or other vegetation before it trims or prunes the same.

Section 7. Supplementing the Pittsburgh City Code, Title 4: public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by adding Section 427.19 as follows:

§ 427.19 - SMALL CELL FACILITIES

- (a) Small Cell Facilities shall be a permitted use in all City zoning districts subject to the approval of the Director of the Department of Mobility and Infrastructure in accordance with the requirements of this Chapter 427, the City's *Guidance for Small Cell Facilities*, and the *Small Cell Aesthetic Standards*.
- (b) Small Cell Facility Application Requirements.
- (1) An executed ROW Use Agreement shall be a prerequisite for the submission of any application for a Small Cell Facility. No application for a Small Cell Facility shall be considered formally submitted by the City if the applicant has not executed a ROW Use Agreement.
- (2) All applications to collocate, construct, modify or replace a Small Cell Facility, Utility Pole or other Wireless Support Structure shall be submitted to the Director of the Department of Mobility and

Infrastructure.

- (3) An application for a Small Cell Facility by a WCF Applicant that currently holds a valid ROW Use Agreement shall be considered formally submitted upon receipt of the initial application materials and confirmation of receipt of all required application fees, unless the applicant is an invoiced or billable customer, as defined in the Department of Mobility and Infrastructure's Rules and Regulations.
- (4) All applications for a Small Cell Facility shall include the following information:
- [a] A statement detailing the proposed Small Cell Facility's compliance with the Siting Hierarchy established by Section 427.19(e). If the proposed site of the Small Cell Facility is not the highest priority site established by the Siting Hierarchy, the statement shall detail why construction of the proposed Small Cell Facility in a higher priority site is not Technically Feasible;
 - [b] A statement detailing the proposed Small Cell Facility's compliance with the Location Hierarchy established by Section 427.19(f). If the proposed location of the Small Cell Facility is not the highest priority location established by the Location Hierarchy, the statement shall detail why construction of the proposed Small Cell Facility in a higher priority location is not Technically Feasible;
 - [c] Construction drawings signed and sealed by an engineer licensed in the Commonwealth of Pennsylvania and clearly showing the following:
 - [1] The type and dimensions of all equipment associated with the Small Cell Facility;
 - [2] The type and dimensions of the existing, replacement, and/or new Utility Pole;
 - [3] The location of the proposed Small Cell Facility, including both longitude and latitude and street address;
 - [4] Before and after drawings or simulations of the support structure showing the proposed equipment locations and dimensional change;
 - [5] The location of the nearest ingress and egress points of any nearby structures, if applicable;
 - [6] ROW lines; and
 - [7] The location of any ground-mounted Accessory Equipment.

- [d] Self-certification that the filing and approval of the application is required by the WCF Applicant to provide additional capacity or coverage for wireless services;
- [e] A structural analysis of the proposed Small Cell Facility signed and stamped by a professional engineer licensed in the Commonwealth of Pennsylvania certifying that the proposed Small Cell Facility is structurally sound;
- [f] Photo simulations showing a mockup of the proposed Small Cell Facility from at least three (3) reasonable line-of-site locations near the project site;
- [g] If the Small Cell Facility is proposed for attachment to a Utility Pole that is owned by a party other than the WCF Applicant, evidence that the WCF Applicant has obtained permission from such party to attach the Small Cell Facility to the Utility Pole;
- [h] If the Small Cell Facility is proposed for attachment to a Utility Pole that was replaced by a third-party within the past twelve (12) months, a description of the Utility Pole that was replaced and the reason for the replacement;
- [i] Certificates of insurance pursuant to the requirements of this Section 427.19(s);
- [j] Agreement to indemnify the City pursuant to this Section 427.19(t);
- [k] The name, address, and telephone number of the person preparing the application;
- [l] Certification of compliance with the 2017 National Electrical Safety Code and all applicable laws, ordinances and regulations for the protection of underground and overhead utilities;
- [m] Certification that the proposed Small Cell Facility will not obstruct, endanger, or hinder the usual travel or public safety on a right-of-way, damage or interfere with other utility facilities located within a right-of-way or interfere with the City or any other utility's use of the utility's facilities located or to be located within the right-of-way;
- [n] A radiofrequency emissions report signed and stamped by a professional engineer licensed in the Commonwealth of Pennsylvania certifying compliance with applicable standards promulgated by the FCC, including but not limited to those relating to radiofrequency emissions;
- [o] Pedestrian and worker safety and traffic control plans; and

[p] A completed application checklist in accordance with the City’s “Guidance for Small Cell Facilities in the City of Pittsburgh,” a copy of which shall be available from the Department of Mobility and Infrastructure.

(c) Eligible Facilities Request. WCF Applicants proposing an Eligible Facilities Request shall obtain a building permit from the Director of the Department of Permits, Licenses, and Inspections. In order to be considered for such permit, the WCF Applicant must submit a building permit application to the City in accordance with applicable permit policies and procedures. Such application shall clearly state that the proposed modification constitutes an Eligible Facilities Request.

(d) Applications Not Required. The City shall not require an application for the following activities:

(1) Routine maintenance or repair work;

(2) The replacement of a Small Cell Facility with a Small Cell Facility that is substantially similar or the same size or smaller and still qualifies as a Small Cell Facility; or

(3) The installation, placement, maintenance, operation or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles by or for a communications service provider authorized to occupy the right-of-way, in compliance with the 2017 National Electrical Safety Code.

(e) Siting Hierarchy. All Small Cell Facilities shall be placed in the most favorable zoning district unless the WCF Applicant can demonstrate that placement in such zoning district is not Technically Feasible. In order of preference from most preferable to least preferable, Small Cell Facilities shall be located in the following zoning districts:

(1) Industrial Zoning Districts

(2) Commercial Zoning Districts

(3) Residential Zoning Districts

(f) Location hierarchy. All Small Cell Facilities shall be constructed in the most favorable location unless the WCF Applicant can demonstrate that placement in such location is not Technically Feasible. In order of preference from most preferable to least preferable, Small Cell Facilities shall be located:

(1) On an existing pole;

(2) On a replacement pole;

(3) On a new pole where there are existing poles on the same side of the street as the proposed new pole. The new pole should be placed in-line with the existing poles and furnishings;

(4) On a new pole on a street or a side of the street where there are no existing poles and furnishings. The new pole's location must not prevent future improvements to the public ROW.

(g) Where not permitted. No Small Cell Facilities shall be permitted on medians or traffic islands, on the horizontal support structure to which traffic signals and other traffic control devices are attached, or in any location where they will interfere with or detract from traffic control devices.

(h) Small Cell Guidance. All Small Cell Facilities shall comply with all applicable requirements of the Department of Mobility and Infrastructure's "Guidance for Small Cell Facilities in the City of Pittsburgh."

(i) Co-location.

(1) An application for a new Small Cell Facility requiring the installation of a new Utility Pole shall not be approved unless the City finds that the Antenna and Accessory Equipment planned for the proposed Small Cell Facility cannot be accommodated on an existing or approved Utility Pole. Any WCF Applicant proposing construction of a new Small Cell Facility requiring the installation of a new Utility Pole shall demonstrate to the satisfaction of the Director, by written submission that a good faith effort has been made to obtain permission to Collocate on an existing building or structure on which:

[a] The WCF Applicant has the right to Collocation;

[b] The Collocation is Technically Feasible and would not impose substantial additional cost; and

[c] The Collocation would not obstruct or hinder travel or have a negative impact on public safety.

(j) Standard of care. All Small Cell Facilities shall meet or exceed all applicable structural standards, clearance standards, and provisions of the latest 2017 National Electrical Safety Code, American National Standards Institute Code, the structural standards of the American Association of State Highway and Transportation Officials, or to any other industry standard applicable to the Small Cell Facility. In case of conflict, the most stringent requirements shall prevail. All necessary certifications shall be obtained by the WCF Applicant and provided to the City.

(k) Standards of Conduct. WCF Applicants and contractors listed on the permit must observe good standards of conduct to be eligible for new permits, plan reviews, or licenses. To meet these good standards of conduct WCF Applicants and contractors must:

(1) Have obtained all necessary permits or permissions prior to performing previous work except in the case of an emergency. In the case of an emergency, the person must comply with Section 415.13;

- (2) Be current in his or her payment history;

 - (3) Have not been found guilty or pleaded guilty to a citation more than three times in a one-year period;

 - (4) Have three or fewer active warnings (i.e. request for compliance) for failure to comply with the terms and conditions of a previously issued permit or permits;

 - (5) Be compliant with required inspections or be in the process of correcting deficiencies from failed inspections of prior work; and

 - (6) Have approval from DOMI for any adjustments to an approved plan or permit.
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- (l) Public safety communications. Small Cell Facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

 - (m) Protection of Street Trees. No street tree shall be removed or have its protected root zone impacted to accommodate the construction, modification, operation, replacement or removal of a Small Cell Facility. No street tree shall be pruned during the construction, modification, operation, replacement or removal of a Small Cell Facility without prior approval from the City Forester.

 - (n) Radio frequency emissions. A Small Cell Facility shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.

 - (o) Time, Place and Manner. The City shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small Cell Facilities in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.

- (p) Graffiti. Any graffiti on a Small Cell Facility shall be removed at the sole expense of the owner within fourteen (14) days of notification by the City.
- (q) Noise Level. Small Cell Facilities must be operated in accordance with Title 6: Conduct, Article I: Regulated Rights and Actions, Chapter 601.04: Noise Control. The City may require the applicant to install noise attenuating or baffling materials if the Department determines that a Small Cell Facility, or any accessory equipment of a Small Cell Facility, emits noise levels that exceed the limits set forth in Section 601.04.
- (r) Timing of Approval.
- (1) Within ten (10) business days of receipt of an application for a Small Cell Facility, the Director shall notify the WCF Applicant in writing of any additional information required to complete the application. Such notice shall toll the applicable shot clock in accordance with the tolling requirements established by the FCC.
- (2) Within sixty (60) calendar days of receipt of a complete application for Collocation of a Small Cell Facility on a preexisting Utility Pole, the Director shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
- (3) Within ninety (90) calendar days of receipt of an application for a Small Cell Facility requiring the installation of a new Utility Pole, the Director shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.
- (4) If the City denies an application for a Small Cell Facility, the City shall provide the WCF Applicant with written documentation of the basis for denial, including the specific provisions of the City Code on which the denial was based, within five (5) business days of the denial.
- (5) The WCF Applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days of receiving the written basis for the denial without being required to pay an additional application fee. The City shall approve or deny the revised application within thirty (30) days of the application being resubmitted for review.
- (s) Relocation or Removal of Facilities. Within ninety (90) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Small Cell Facility in the ROW shall, at its own expense, temporarily or

permanently remove, relocate, change or alter the position of any WCF when the City, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (1) The construction, repair, maintenance or installation of any City or other public improvement in the right-of-way;
- (2) The operations of the City or other governmental entity in the Right-of-Way;
- (3) Vacation of a street or road or the release of a utility easement; or
- (4) An emergency as determined by the City.
- (t) Insurance. Each person that owns or operates a Small Cell Facility shall provide the Director with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Small Cell Facility.
- (u) Indemnification. Each person that owns or operates a Small Cell Facility shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Small Cell Facility. Each person that owns or operates a Small Cell Facility shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of Small Cell Facility. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, settlements, losses, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
- (v) Permit Fees. The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a Small Cell Facility, as well as related inspection, monitoring and related costs. Such permit fees shall be established by the City Fee Schedule and shall comply with the applicable requirements of the FCC.
- (w) Reimbursement for ROW Use. In addition to permit fees as described in this section, every Small Cell Facility in the ROW is subject to the City's right to fix annually a fair and reasonable fee to be paid for use

and occupancy of the ROW. The owner of each Small Cell Facility shall pay an annual fee to the City to compensate the City for the City's costs incurred in connection with the activities described above.

(x) Contractors and subcontractors. A WCF Applicant shall ensure that a contractor or subcontractor performing construction, reconstruction, demolition, repair or maintenance work on a Small Cell Facility meets and attests to all of the following requirements:

(1) The contractor or subcontractor maintains all valid licenses, registration or certificates required by the federal government, the Commonwealth of Pennsylvania, or the City that is necessary to do business or perform the applicable work.

(2) The contractor or subcontractor maintains compliance with the act of June 2, 1915 (P.L. 736, No. 338), known as the Workers' Compensation Act, the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L. 2897, No. 1), known as the Unemployment Compensation Law, and all applicable bonding and liability insurance requirements.

(3) The contractor or subcontractor has not defaulted on a project, declared bankruptcy, been debarred or suspended on a project by the federal government, the Commonwealth of Pennsylvania, or any local governmental entity within the previous three (3) years.

(4) The contractor or subcontractor has not been convicted of a misdemeanor or felony relating to the performance or operation of the business of the contractor or subcontractor within the previous ten (10) years.

(5) The contractor or subcontractor has completed a minimum of the United States Occupational Safety and Health Administration's 10-hour safety training course or similar training sufficient to prepare workers for any hazards that may be encountered during their work on the Small Cell Facility.

Section 7. Supplementing the Pittsburgh City Code, Title 4: public Place and Property, Article II: Telecommunications in the Public Right-of-Way, by adding Section 427.20 as follows:

§ 427.20 - MISCELLANEOUS

Introduced: 12/10/2021

Bill No: 2021-2314, **Version:** 2

Committee: Committee on Public Works

Status: Passed Finally

- A. **Police powers.** The City, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.
- B. **Severability.** Severability is intended throughout and within the provisions of this chapter. If any section, subsection, sentence, clause, phrase or portion of this chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this chapter.
- C. **Effective Date.** This Ordinance shall become effective immediately upon enactment by the Council of the City of Pittsburgh.