

**AN ORDINANCE
AMENDING AND RE-ORDAINING CHAPTER 28 (STREETS AND SIDEWALKS) OF
THE CODE OF THE CITY OF CHARLOTTESVILLE, VIRGINIA (1990) AS
AMENDED, TO ESTABLISH PROCEDURES FOR APPROVAL OF SMALL CELL
FACILITIES IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF
CHARLOTTESVILLE AND TO ESTABLISH STANDARDS FOR SUCH FACILITIES**

WHEREAS, the City of Charlottesville (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, and schools within the City; and

WHEREAS, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, within the Virginia Acts of Assembly, Article 835 (2017), the state legislature mandated that localities must accommodate certain types of wireless communications infrastructure within its public rights-of-way, and the City intends to comply with this state mandate, and with requirements of other state and federal laws pertaining to wireless communications facilities, to the extent such laws preempt local municipal control;

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that Title 28 (Streets and Sidewalks) of the Code of the City of Charlottesville shall be amended and re-ordained, by adding the following Article VIII (Wireless Communications Facilities in Public Rights of Way), as follows:

CHAPTER 28. STREETS AND SIDEWALKS

**ARTICLE VIII. WIRELESS COMMUNICATIONS FACILITIES IN
PUBLIC RIGHTS OF WAY**

Sec. 28-235. Purpose and Scope.

(a) Purpose. The purpose of this Article is to establish policies and procedures for the placement of certain small cell facilities in public rights-of-way within the City’s jurisdiction,

which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

(b) Intent. In enacting this Article, the City is establishing uniform standards to address issues presented by small cell facilities located within the public rights-of-way, including without limitation, to:

- (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;
- (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) limit interference with the facilities and operations of public utilities and other facilities lawfully located in rights-of-way or public property;
- (4) minimize impact on the City's historic districts; and
- (5) respect the character of the neighborhoods in which facilities are installed; and
- (6) facilitate the deployment of small cell facilities to meet the increasing telecommunications needs of its citizens.

(c) Zoning. Applications to collocate small cell facilities on structures located outside public rights-of-way shall be treated as required by Virginia Code § 15.2-2316.4 and City Code § 34-1070 et seq.

(d) Conflicts with Other Chapters. To the extent any provision of this Article may be in conflict with other provisions of the City Code, the provisions of this Article shall take precedence over any such conflicting provisions.

(e) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Article, a wireless services provider shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

Sec. 28-236. Definitions

- (a) Terms defined within Virginia Code § 15.2-2316.3 and § 56-484.26 shall have the meanings set forth therein.
- (b) "Applicable Safety Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with this Article. The term shall include, without

limitation, (i) the Virginia Uniform Statewide Building Code (USBC), (ii) the Virginia Statewide Fire Prevention Code (VSFPC), (iii) any international building or fire codes incorporated into the USBC or VSFPC, and (iv) the most recent editions of the National Electrical Code and National Electrical Safety Codes, regardless of whether a building permit is required by the City's Building Official for or in connection with the installation of a wireless facility.

- (c) "Applicant" means any wireless services provider who is authorized by this article to submit an application, or a duly authorized agent for such wireless services provider.
- (d) "Application" means a request submitted by an applicant pursuant to this Article.
- (e) "Day" means calendar day.
- (f) "Emergency" is 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 wireless facilities in the right-of-way to be unusable and result in loss of the services provided.
- (g) "FCC" means the Federal Communications Commission of the United States.
- (h) "Fee" means a one-time charge.
- (i) "Law" means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- (j) "Permit" means a written authorization required by the City or other state or federal authority to perform an action or initiate, continue, or complete a project.
- (k) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (l) "Project" means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the collocation on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of Va. Code § 15.2-2316.4 apply.
- (m) "Rate" means a recurring charge.
- (n) "ROW" means "rights-of-way" or "right-of-way", as indicated by context, which terms each refer to the entire width between the boundary lines of a way or place open to the use of the public for purposes of pedestrian, bicycle or vehicular travel, including, without limitation, areas on, below, and/or above a City-owned roadway, highway, street, sidewalk, alley, or

similar property (but not including a federal interstate highway or any state-maintained roads), within the jurisdictional limits of the City of Charlottesville.

Section 28-237. Permitted Use; Application and Fees.

(a) Permit Required. No person shall place a small cell facility, or a support structure for such facility, within the ROW, without first filing an application and obtaining a permit therefor, except as otherwise provided in this Article. No special exception, special use permit, or variance required by provisions of the City's zoning ordinance shall be required for (i) any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure within the ROW, provided that the wireless services provider or wireless infrastructure provider has permission from the owner of the structure to collocate equipment on the structure; or (ii) the installation or construction of an administrative review-eligible project.

(b) Application. Each application for a permit filed pursuant to this Article shall be on a form, paper or electronic format provided by the City. The applicant may designate any portions of its application materials that contain proprietary or confidential information as "proprietary" or "confidential" by clearly labeling such content where it appears on a particular page of the application materials. The City makes no representations or warranties as to whether any such marking(s) will allow any portion(s) of an application marked by an applicant to be exempt from public inspection under the Virginia Freedom of Information Act.

(c) Application Requirements. An application shall be made by a wireless services provider or its duly authorized agent and shall contain the following:

- (1) The wireless services provider's name, address, telephone number, and e-mail address;
- (2) If a duly-authorized agent for a wireless services provider is making the application, then the agent's name, address, telephone number, and e-mail address shall be provided, as well as the wireless services provider's, and the application shall include evidence of the agent's written authorization to act as the agent of the wireless services provider, and make binding representations and commitments on behalf of such provider, for and in connection with the application;
- (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting together with the applicant with respect to the preparation of materials submitted with the application.
- (4) A general description of the scope of work necessary for the construction or installation and the purposes and intent of the small cell facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

(5) A site plan, with sufficient detail to show the proposed location of all items the applicant seeks to construct or install in the ROW, including any manholes, poles, or other structures, and the size, type, and depth of any conduit, enclosure, or cabinets.

(6) For facilities proposed to be located on an existing structure, evidence that the applicant has permission from the owner of the structure to co-locate equipment on each such structure.

(7) An attestation that the construction of the proposed small cell facility(ies) will commence within two years of final approval and be diligently pursued to completion, unless the City and the applicant agree to extend this period. No extension(s) shall be granted to allow, cumulatively, more than 12 additional months beyond the permit issuance date.

(8) An attestation that, to the best of the applicant's knowledge, the information contained in the application is true.

(d) When Application Not Required. An application shall not be required for: (i) routine maintenance of any wireless facility within the ROW; (ii) the replacement of an existing small cell facility within the ROW with another small cell facility that is substantially similar or smaller in size, weight, and height; (iii) the installation, placement, maintenance, operation, or replacement of micro-wireless facilities that are strung on cables between existing utility poles in the ROW, in compliance with applicable Safety Codes; or (iv) replacement of wireless facilities or wireless support structures within the ROW, within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller. Notwithstanding the foregoing, the City may require a single use permit for an activity referenced within clause (i), (iii), or (iv) preceding above in this paragraph, if such activity will: involve working within a vehicular travel lane or require closure of a vehicular travel lane; disturb the pavement, shoulder, roadway or ditch line of any street; include placement on limited access ROW; require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, terms of the existing permit for that facility or the structure upon which it is attached.

(e) Application Fees. All applications for permits shall be accompanied by the following fees:

- (1) \$250.00, for processing a permit seeking authorization to attach or collocate small cell facilities on existing or proposed new structures within a ROW; and, in addition,
- (2) \$100.00 each, for up to five small cell facilities addressed in an application, plus \$50.00 for each additional small cell facility addressed in the application (on a

single application an applicant may include not more than 35 individual facilities for review).

- (3) The maximum fee that may be charged in accordance with the provisions of Virginia Code §15.2-2316.4:1 for an administrative-eligible project is \$500.00.

Sec. 28-238. Action on Permit Applications.

(a) Review of Applications.

(1) Within ten days of receiving an application and a valid email address for the applicant, the City will determine and notify the applicant by electronic mail whether or not the application is complete. If an application is incomplete, the City will specifically identify any missing information in the electronic mail to the applicant; otherwise, the application shall be deemed complete. The processing deadline in subsection (2) is tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the City.

(2) An application shall be processed on a nondiscriminatory basis. The City shall approve or disapprove a requested permit for collocation of a small cell facility on an existing structure, and it shall be deemed approved if the City fails to approve or deny the application within 60 days of receipt of the complete application, in accordance with the requirements of Virginia Code § 56-484.29.

(3) Any disapproval of an application for a small cell facility shall be in writing and accompanied by an explanation for the disapproval. For any disapproval of an administrative review-eligible project or any standard process project, the City shall provide the applicant with a written statement of the reasons for such disapproval and, if the City is aware of any modifications to the project as described in the application that, if made, would permit the City to approve the proposed project, the City shall identify them in the written statement.

(4) The City shall approve or disapprove an application for a new structure within the lesser of 150 days of receipt of the completed application or the period required by federal law for such approval or disapproval.

(5) The City shall approve or disapprove the application for the collocation of any wireless facility that is not a small cell facility within the lesser of 90 days of receipt of a completed application or the period required by federal law for such approval or disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C. § 1455(a), in which approval shall be pursuant to Sec. 34-1083(b).

(6) The City may deny a proposed collocation of a small cell facility on an existing structure only for the following reasons:

- a. Material potential interference with other pre-existing communications facilities, or with future communications facilities that have already been issued a permit for a specific location, or that have been reserved for future public safety communications facilities;
- b. Substantial adverse effect on public safety or any critical public service needs;
- c. Conflict with a local ordinance adopted pursuant to Virginia Code § 15.2-2306 or pursuant to the City's charter, on an historic property that is not eligible for the review process established under 54 U.S.C. §306108.

(7) If an applicant submits an application seeking approval of a single permit for the collocation of multiple small cell facilities on existing structures, then the denial of one or more such facilities shall not delay processing of any other facilities that are part of that same application.

(8) For an application seeking a permit to authorize construction or installation of a new support structure within any ROW for a small cell facility, or for relocation of any existing utility pole or other existing wireless support structure within a ROW, for the purpose of accommodating the attachment of a small cell facility, the application shall (in addition to the materials required by Section 3(C) above) include a written agreement with the City, in a form approved by the Office of the City Attorney and approved by City Council in accordance with any applicable requirements of Article VII, Section 9 of the Constitution of Virginia.

No such agreement shall exceed an initial term of ten (10) years or allow more than three options for renewals for terms of five years; each agreement shall include terms allowing for early termination by the City for cause, and for early termination by mutual agreement of the parties; and each agreement shall allow the City to require a permittee to relocate wireless support structures in accordance with the provisions of Virginia Code § 56-484.30.

(9) For an application seeking a permit to authorize the attachment of a small cell facility to a government-owned structure, the application shall (in addition to the materials required by Section 3(C) above) include a written agreement with the City, in a form approved by the Office of the City Attorney, containing rates, terms, and conditions compliant with the provisions of Virginia Code § 56-484.31, and approved by City Council in accordance with applicable legal requirements.

(b) Permit Scope and Effect.

Approval of a permit authorizes the applicant to:

- (1) Undertake the installation, modification or collocation; and
- (2) Subject to applicable relocation requirements and the applicant's right to terminate at any time: operate and maintain the small cell facilities on the existing support structure(s) identified within the application so long as they are in compliance with the criteria set forth in section 5 and do not create or result in any conditions for which the permit could have originally been denied, as set forth within subsection 4(A)(3), above.

(c) Authority Granted; No Property Right or Other Interest Created.

A permit from the City authorizes an applicant to undertake only certain activities, and to install only certain encroachments within a ROW, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the ROW.

Sec 28-239. Small Wireless Facilities in the Right Of Way; Maximum Height; Other Requirements.

(a) Technical Requirements. Small cell facilities and utility poles to which such facilities are attached shall comply with the following requirements:

- (1) Height of new small cell facilities. New small cell facilities in the ROW may not extend (i) more than ten feet above an existing utility pole in place as of the effective date of this Article; (ii) for a replacement utility pole installed in the ROW, the top of the facility shall not exceed the greater of: (a) seventeen (17) feet in height above the pole being replaced, or (b) 60 feet above ground level; or (iii) for small cell facilities on a new utility pole, above the height permitted for a new utility pole under this Article.
- (2) Height of new or modified utility poles installed to support small cell facilities. Each new structure designed to support small cell facilities installed in the ROW shall meet the maximum height limitations of an administrative review-eligible facility (i.e. not exceed fifty (50) feet above ground level, provided that the structure with attached wireless facilities is (i) not more than ten (10) feet above the tallest existing utility pole located within 500 feet of the new structure within the same ROW or within the existing line of utility poles; and (ii) not located within the boundaries of a local, state, or federal historic district); or, if a proposed new pole designed to support small cell facilities does not meet the height limitations of an administrative review-eligible facility, then it would require review and approval pursuant to Sec. 34-1083(e).

- (3) Maximum Size. The small cell facility must conform to the size and height limitations specified within the definition of a small cell facility as set forth within Va. Code § 56-484.26.
- (4) Utility Pole Modifications. Utility pole modifications proposed for the purpose of accommodating a small cell facility collocation shall be fabricated from material having a degree of strength capable of supporting the small cell facility and shall be capable of withstanding wind forces and ice loads in accordance with applicable Safety Codes. A deviation from any applicable Safety Code shall be by written modification that is securely bound by an engineer in accordance with applicable engineering standards.
- (5) Color. Small cell facilities shall blend in with the surrounding environment or otherwise concealed to the extent practicable. Small cell facilities shall be of the same color for the antenna and related equipment. The color shall be one consistent with or that blends into the wireless support structure on which such facilities are installed, unless a different color is needed for public safety or service reliability reasons, or unless a different color is required within an architectural design control district, consistent with the provisions of City Code § 34-1080(a)(3).
- (6) Wiring and Cabling. Wires and cables connecting the antenna and appurtenances serving the small cell facility shall be installed in accordance with applicable Safety Codes, National Electrical Code and National Electrical Safety Code. In no event shall wiring and cabling serving the small cell facility interfere with any wiring or cabling installed by a cable television or video service operator, gas or electric utility, water or sewer utility, or telephone utility.
- (7) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small cell facility, unless the small cell facility is proposed to be attached to an existing utility pole that incorporated guy wires prior to the date of the small cell facility application.
- (8) Grounding. The small cell facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most recent edition of the National Electrical Code regarding grounding of small cell facilities.
- (9) Signage. No small cell facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the City Code of Ordinances. Other than warning or notification signs required by federal law or regulations, or identification and location markings, a small cell facility shall not have signs installed thereon.
- (10) Access. Wireless service providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures and small cell facilities in the ROW at all times, following written notice to the City Engineer, for purposes consistent with this Article.

(b) Other Requirements. A wireless services provider that seeks to collocate small cell facilities or install or modify a utility pole supporting small cell facilities shall be subject to the following requirements:

(1) Small cell facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small cell facilities shall not be installed directly over any water, sewer, gas, electric or reuse main or service line.

(2) New utility poles installed to support small cell facilities shall be made of the same or similar material as existing poles in the immediate area.

(3) Small cell facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small cell facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.

(4) A wireless services provider shall repair, at its sole cost and expense, any damages including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water and sewer lines that are directly caused by any activities performed in connection with the installation and/or maintenance of a wireless facility in the ROW. The wireless services provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs.

(c) Undergrounding Provisions. Wireless service providers shall comply with laws, ordinances, regulations and other requirements that prohibit installation of structures above ground within the ROW in areas designated solely for underground or buried cable and utility facilities where the City has required all cable and utility facilities other than City poles and attachments to be placed underground by a date certain that is at least three months prior to the submission of the application. If a permit applicant claims that compliance with such undergrounding provisions would constitute an “effective prohibition” under federal law, then the application shall contain the written opinion of an attorney licensed to practice within the Commonwealth of Virginia to that effect, and such written opinion shall set forth all of the factual bases for the attorney’s conclusions.

Sec. 28-240. Removal, Relocation or Modification of Small Cell Facility in the Right Of Way.

(a) Notice. Within ninety days following written notice from the City, a wireless services provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell facilities or utility pole for which it has a permit, whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the ROW.

(b) Emergency Removal or Relocation of Facilities. The City retains the right to cut or move any small cell facilities or utility poles located within the ROW, as the City may determine to be necessary, appropriate or useful in response to any public health or public safety emergency. If circumstances permit, the City shall notify the wireless services provider and provide it an opportunity to move its small cell facilities or utility poles prior to cutting or removing them and shall notify the wireless services provider after cutting or removing a small cell facility or utility pole.

(c) Abandonment of Facilities. A wireless services provider shall remove an abandoned small cell facility within 180 days of abandonment of such facility. Should the wireless services provider fail to timely remove the abandoned small cell facility or utility pole, the City may remove the small cell facility and may recover the actual cost of such removal from the wireless services provider, plus an administrative fee in the amount of ten percent (10%) of such actual cost. A small cell facility or utility pole shall be deemed abandoned at the earlier of the date that: (i) the wireless provider notifies the City in writing that it intends to abandon the small cell facility, or (ii) the City provides the wireless provider with written notice that it believes a facility has been abandoned, and the wireless provider has not notified in the City in writing within 90 days of receipt of such written notice from the City that the small cell facility is in service or that the wireless provider is working diligently to put the small cell facility into service.

(d) No wireless services provider shall allow any employee or contractor to perform any construction, installation, or removal of a small cell facility, or any structure supporting such facility, unless that employee or contractor holds a valid Virginia contractor's license or certificate.

Sec. 28-241. Liability of wireless service providers.

(a) Liability. Each wireless services provider who owns or operates any small cell facility within a ROW assumes all risk of liability for personal injuries and damages to persons or property that are directly caused by such facility, including all work associated with the construction, installation, relocation, operation or removal of such facility, whether completed by the wireless services provider or the provider's agent or contractor. Each wireless services provider shall procure and maintain insurance, as specified in the license agreement between the City and the wireless services provider.

(b) Indemnification. Each wireless services provider who receives a permit approved under this Article shall defend, indemnify, and hold harmless the City, its boards, commissions, officials, officers, agents, contractors, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including court costs and reasonable attorney's fees, resulting from the alleged acts or omissions of permittee and the permittee's officers, agents, contractors or employees in connection with the permitted activities. This indemnity provision shall be applicable regardless of the merit or outcome of such claim or suit.

Sec. 28-242. Attachment to City Structures.

(a) Exclusivity. The City will not enter into arrangements with any person for the right to collocate on City-owned which would be unfair, unreasonable or discriminatory.

(b) Rates. The rate for collocation of small cell facilities on a City-owned structure shall be \$20 per City structure per year.

(c) Make-Ready Work

(1) The City may, by resolution, establish rates, terms and conditions for agreements by which it may authorize the installation of small cell facilities to City-owned structures. Any such rates, terms and conditions shall comply with the standards set forth within Virginia Code § 56-484.31.

(2) For utility poles owned by the City, estimates for make-ready work necessary to enable the utility pole to support an agreed upon collocation shall be provided in accordance with Virginia Code § 56-484.31.

Secs. 28-243—28.250. Reserved.

Approved by Council
August 6, 2018



Clerk of Council