

ORDINANCE NO. 2018-24  
Introduced by Mayor Bodnar

**AN ORDINANCE AMENDING CHAPTER 709 OF THE  
MAYFIELD VILLAGE CODIFIED ORDINANCES AND  
RENAMING IT "USE OF PUBLIC WAYS BY SERVICE  
PROVIDERS" AND DECLARING AN EMERGENCY.**

BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, COUNTY OF  
CUYAHOGA AND STATE OF OHIO:

Section 1. That Chapter 709 of Part Seven-Business Regulation of the Codified Ordinances of Mayfield Village, be and is hereby amended in order that it shall read in its entirety as follows:

**CHAPTER 709  
Use of Public Ways by Service Providers**

- 709.01 Scope of chapter; definitions.
  - 709.02 Consent to occupy or use the public right-of-way. General public right-of-way use regulations.
  - 709.03 General public right-of-way use regulations.
  - 709.04 Location, relocation and removal of small cell facility and wireless support structure.
  - 709.05 Notice of Work, routine maintenance and emergency work.
  - 709.06 Recovery of Costs
  - 709.07 Miscellaneous provisions.
  - 709.99 Penalties and other remedies.
- 709.01 SCOPE OF CHAPTER; DEFINITIONS.**
- (a) The purpose and intent of this Chapter is to:
    - (1) Manage Occupancy or use of the Public Right-of-Way.
    - (2) Encourage the provision of advanced, competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the Village;
    - (3) Permit and manage reasonable access to the Public Right-of-Way

of the Village for telecommunications service purposes on a competitively neutral basis.

- (4) Conserve the limited physical capacity of the Public Right-of-Way held in trust by the Village for the benefit of the public.
- (5) Assure that the Village receives cost recovery for the Occupancy and use of the Public Right-of-Way in accordance with law.
- (6) Assure that all Service Providers with Facilities in the Public Right-of-Way comply with the ordinances, rules and regulations of the Village.
- (7) Assure that the Village fairly and responsibly protects the public health, safety and welfare.
- (8) Enable the Village to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development.
- (9) Preserve the character of Mayfield Village by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures through careful design siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable.

(b) For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (1) Accessory Equipment means any equipment used in conjunction with a Wireless Facility or Wireless Support Structure or Small Cell Facility. "Accessory Equipment" includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets.
- (2) Affiliate means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another Person.
- (3) Antenna means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to, radio, television, cellular, paging, personal telecommunications service, internet, and microwave telecommunications.
- (4) Capital Improvement means an addition made to enhance the value or extend the useful life of an existing System or Facilities, including Construction, Reconstruction, installation, rehabilitation, renovation, improvement, enlargement and extension of Facilities, but not including ordinary or Routine Maintenance.
- (5) Village means Mayfield Village, Ohio.
- (6) Village Property means and includes all real property owned by the Village, other than Public Streets and public easements, and all property held in a proprietary capacity by the Village, which are not subject to Public Right-of-Way consent and requirements of this Chapter.

- (7) Collocation or Collocate means to install, mount, maintain, modify, operate, or replace a Wireless Facility on a Wireless Support Structure.
- (8) Construct. Constructing, Construction, etc. means installing, repairing, replacing or removing any Facility, regardless of the methods employed.
- (9) Emergency means an unforeseen occurrence or condition calling for immediate action.
- (10) Engineer means the Engineer of the Village or Engineer's designee.
- (11) Excavate, Excavating or Excavation means cutting, sawing, breaking, drilling into, boring under, or otherwise altering any Public Street or sidewalk pavement, and/or digging, drilling into or boring under any unpaved portion of the Public Right-of-Way, including any other work or activity which disturbs the existing surface or subsurface structure, composition, or soil compaction, for the purpose of carrying on any Construction activity.
- (12) Facilities or Facility means the plant, equipment and property, including but not limited to Accessory Equipment, Antenna, cables, fibers, wires, pipes, conduits, ducts, pedestals, antennae, electronics, poles, pipes, mains, plant, equipment and other appurtenances located under, on or above the surface of the ground in the Public Right-of-Way of the Village for a Small Cell Facility.
- (13) Lane Obstruction means the blocking or diverting of vehicular and/or pedestrian traffic from a street or sidewalk for the purpose of Constructing, Excavating, installing, repairing, maintaining, operating, replacing or removing any Facility, including (A) the lifting or removing of manhole or handhole covers, and (B) the opening or accessing of at-grade or pole-mounted cabinets, pedestals, transformers, power supplies, amplifiers, splice enclosures, traps or other Facilities.
- (14) Micro Wireless Facility means a Small Cell Facility that is not more than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that does not have an exterior antenna more than eleven (11) inches in length suspended on cable strung between Wireless Support Structures. (Village Council determines size).
- (15) Monopole means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.
- (16) Occupancy, Occupy or Use means, with respect to the Public Right-of-Way, to place a tangible thing in the Public Right-of-Way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances or Facilities.
- (17) Overhead Facilities means utility poles and wires, cables and other such equipment running between and on such poles, including the

- underground supports and foundations for such Facilities.
- (18) Person means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies, trusts, public utility, any other entity, and individuals and includes their lessors, trustees and receivers; but specifically excludes the Village itself.
- (19) Private Service Provider means any Person who, pursuant to the consent to Occupy or Use the Public Right-of-Way pursuant to this Chapter, directly or indirectly owns, controls, operates or manages a Small Cell Facility and Wireless Support Structure within the Village's Public Right-of-Way used or to be used for the purpose of transmitting, receiving, distributing or providing telecommunications or Wireless Services.
- (20) Public Right-of-Way means the surface of, and the space within, through, on, across, above or below, any Public Street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the Village or other public entity or political subdivision.
- (21) Public Street means the paved and unpaved portion of any street, road, boulevard, drives, highway, freeway, parkway, lane court, alley or other Public Right-of-Way in which the Village has an interest in law or equity and which has been acquired, established, dedicated or devoted to street purposes.
- (22) PUCO or Public Utilities Commission of Ohio means the State Administrative agency, or successor, authorized to regulate and oversee certain Public or Private Service providers and Services in the State of Ohio.
- (23) Reconstruct, Reconstruction, etc. means substantial physical change to all or a portion of an existing Facility or System involving Construction in Public Streets, utility easements, or Public Right-of-Way.
- (24) Routine Maintenance means repair, upkeep, replacement or restoration of existing Facilities located in the Public Right-of-Way that requires no more than the (1) working day to complete, is not an Emergency and does not include Excavation of the Public Right-of-Way.
- (25) Service Provider means any Private Service Provider.
- (26) Small Cell Facility means a Wireless Facility that meets both of the following requirement:
- (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.
- (27) State means the State of Ohio.
- (28) Utility Pole means a structure that is designed for, or used for the Purpose of, carrying lines, cables, or wires for electric or telecommunications services.
- (29) 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 includes Small Cell Facilities.
  - (D) 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.
- (30) Wireless Service means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using Wireless Facilities.
- (31) Wireless Support Structure means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, sign pole, or Utility Pole capable of supporting Small Cell Facility. As used in this Chapter, "Wireless Support Structure" excludes all of the following:
  - (A) A utility pole or other facility owned or operated by a municipal electric utility.
  - (B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

709.02 CONSENT TO OCCUPY OR USE THE PUBLIC RIGHT-OF-WAY.

(a) Consent Required to Occupy Public Right-of-Way. No Person shall collocate a Small Cell Facility and/or construct, maintain, modify, operate, or replace a Wireless Support Structure in the Public Right-of-Way without obtaining prior consent from the Village to do so.

(b) Initial Consent Presumed.

- (1) A Person with a Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way on the effective date of this Chapter, who lawfully occupies the Public Right-of-way on the effective date of this Chapter, shall be presumed to have initial consent of the Village for its existing Small Cell Facility and Wireless Support Structure to Occupy or use the Public Right-of-Way which has been previously approved by the Village.
- (2) Initial presumed consent for Occupancy or use of the Public Right-of-Way is limited to the existing Small Cell Facility and Wireless Support Structure.
- (3) A Person with initial presumed consent is not relieved from compliance with this Chapter with respect to the ongoing Occupancy or Use of the Public Right-of-Way including, but not limited to, the insurance and Indemnity requirements set forth in Sections 709.02(e) and (f) of this Chapter.

(c) Application for Consent to Occupy or Use Public Right-of-Way.

- (1) The following Persons shall apply to the Village for consent to Occupy or use the Public Right-of-Way on a form provided by the Village, any Person who:
  - (A) Does not currently have an existing, Small Cell Facility on a Wireless Support Structure in the Village's Public Right-of-Way and desires to Construct a new Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way; or
  - (B) Has initial presumed consent or Village consent to Occupy or Use the Public right-of-Way on a Wireless Support Structure but is planning:
    - (i) a Capital Improvement or Reconstruction of an existing Small Cell Facility on a Wireless Support Structure; or
    - (ii) to Construct an additional Small Cell Facility on a Wireless Support Structure anywhere in the Village.
- (2) The application for Consent to Occupy or Use the Public Right-of-Way shall include the following information with respect to the applicant's or Service Provider's planned or existing Small Cell Facility on a Wireless Support Structure in the Public Right-of-Way, as well as plans for any planned Capital Improvements or Reconstruction:
  - (A) The identity, legal status and federal tax identification number of the applicant, including all Affiliates of the applicant or Service Provider in the State of Ohio that will Use or Occupy the Public Right-of-Way or are in any way responsible for the Small Cell Facility and Wireless Support Structure in the Public Right-of-Way.
  - (B) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of

- the application or initial registration and available at all reasonable times to be notified in case of emergency.
- (C) A description of the existing or proposed Small Cell Facility and Wireless Support Structure in the Village's Public Right-of-Way, including but not limited to engineering plans, specifications or a map, all in sufficient detail to identify:
    - (i) the location of the applicant's Small Cell Facility and Wireless Support Structure or proposed Small Cell Facility and Wireless Support Structure.
    - (ii) the location of all existing Overhead and/or underground Facilities, Facility, Small Cell Facilities, Wireless Support Structures in the Public Right-of-Way in the area of the applicant's or Service Provider's Small Cell Facility and Wireless Support Structure or proposed Small Cell Facility and Wireless Support Structure that is sufficient to show the impact of the applicant's Small Cell Facility and Wireless Support Structure on other existing Facilities, Facility, Small Cell Facility or Wireless Support Structures.
    - (iii) the location of all overhead and underground utility easements.
  - (D) A preliminary Construction schedule and completion date for all planned Capital Improvements.
  - (E) Evidence that the applicant or Service Provider has complied, or will comply, with indemnification and insurance requirements of this Chapter.
  - (F) Information sufficient to determine that the applicant or Service Provider has received any certificate of authority required by the PUCO.
  - (G) A description of the construction methods to be employed for the protection of existing structures, fixtures and Facilities in or adjacent to the Public Right-of-Way.
  - (H) A description of the structures, improvements and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.
  - (I) A description of the impact of Construction, Reconstruction, installation, maintenance or repair of a Small Cell Facility and Wireless Support Structure on trees in or adjacent to the Public Right-of-Way, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas disturbed during Construction.
  - (J) All applications shall be accompanied by the certification of a State of Ohio registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.
  - (K) All applications which involve a Lane Obstruction or work on,

in, under, across or along any Public Right-of-Way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Department of Transportation's Uniform Manual of Traffic Control Devices and other applicable ODOT regulations, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The Village may require the Service Provider to use and employ the Village Police Force for Traffic Control.

- (L) Such other and further information as may reasonably be requested by the Village.
- (3) Permit Application Review Timeframes
- (A) Collocation of Small Cell Facilities on Existing Wireless Support Structures. The Village Council shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with an existing wireless support structure not later than ninety (90) days after the date of filing by an entity of a completed application.
  - (B) New Wireless Support Structures and Associated Small Cell Facilities. The Village Council shall grant or deny its consent for requests to construct, modify or replace a wireless support structure associated with a small cell facility within the right-of-way not later than one hundred twenty (120) days after the date of filing by an entity of a completed application.
  - (C) Wire Support Structures and/or Small Cell Facilities Removal. The Village Council shall grant or deny its consent for request to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the General Right-of-Way Permit required for this activity.
- (4) The Village will regulate the above timeframes as follows. For applications regarding small cell facilities on existing support structures, the Village, by and through its Planning Commission, shall recommend the granting or denial, in writing, a Person's application for consent to Occupy or Use the Public Right-of-Way within forty (40) days of the date on which the Person filed the application and all necessary information with the Village. The Village Council will act upon the Planning Commission's recommendation within fifty (50) days and shall grant or deny, in writing, a person's application for consent to occupy or use the Public Right-of-Way. For applications involving new wireless support structures, the above timelines for Planning Commission recommendation and Council's granting or denial are extended by fifteen (15) days to each the Planning Commission and Village Council.
- (A) The Village may withhold, deny or delay its consent to a

Person's application to Occupy or Use the Public Right-of-Way based on the health, safety and welfare of the Village and in accordance with Village Ordinances and Ohio law. These reasons may include but not be limited to those criteria set forth in Section 709.02(d) of this Chapter.

- (B) If the Village Council denies a Person's application to Occupy or Use the Public Right-of-Way, the Village shall provide its reasons in writing for denying the application, and shall provide any information that the Person may reasonably request necessary for the Person to obtain the Village's consent to Occupy or Use the Public Right-of-Way.
- (5) The Village's grant of consent for a Person to Occupy or Use the Public Right-of-Way shall be in the form of a Right-of-Way Occupancy Certificate which shall set forth the specific terms of the Village's consent for such Person to Occupy or Use the Public Right-of-Way.
- (6) Each Person submitting an application for Consent to Occupy or Use the Public Right-of-Way shall pay a fee as set forth in Section 709.06 and assessed by the Building Commissioner to reimburse the Village for its administrative costs.
- (7) A Person seeking to Construct, modify, Collocate, or replace more than one (1) Small Cell Facility or one (1) Wireless Support Structure may file a consolidated application for consent to occupy or use the Public Right-of-Way for up to thirty (30) Small Cell Facilities in a single application or up to thirty (30) Wireless Support Structure requests in a single application. Said single application may only address multiple Small Cell Facilities or multiple Wireless Support Structures if they each involve substantially the same type of Small Cell Facilities or substantially the same type of Wireless Support Structures. In the case of a consolidated application, the fees provided for in Section 4939.0316 of the Ohio Revised Code and Section 709.06 of this Chapter may be cumulative. However, the Village, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals. The Village may separately address Small Cell Facilities or Wireless Support Structures for which incomplete information has been received or which are denied. In the case of a single application, each Small Cell Facility or Wireless Support Structure proposed to be Constructed, modified or Collocated on, or replaced shall constitute a separate request for Consent to Occupy or use the Public Right-of-Way for purposes of tolling the response deadline set forth in this Chapter.
- (8) The time periods set forth herein may be tolled:
  - (A) By mutual agreement between the Person requesting consent and the Village;
  - (B) Where the Village determines that the application is incomplete; or

- (C) By the Village in the event it receives applications for at least twenty-five (25) Small Cell Facilities or Wireless Support Structures contained in pending requests, in which case the Village may toll the ninety (90) day period for up to twenty-one (21) days.
- (8) To toll the time period for incompleteness, the Village shall provide written notice to the Person requesting consent not later than thirty (30) days after receiving the request, clearly and specifically delineating all missing documents or information.
- (9) The time period resumes when the Person makes a supplemental submission in response to the Village's notice of incompleteness.
- (10) If a supplemental submission is inadequate, the Village shall notify the Person not later than ten (10) days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (A) to (C) of this Section.

(d) Small Cell Facility in Public Right-of-Way. No Person shall occupy or use the Public Right-of-Way as a Small Cell Facility on a Wireless Support Structure without first obtaining the approval of the proposed improvements by the Village Council after submission to the Planning Commission for a recommendation to approve or deny the proposed improvements. The Person proposing the improvements shall first deliver to the Planning Commission twelve (12) sets of the plans and specifications including all necessary details, profiles, and cross-sections for each proposed improvement in the event the plans and specifications are not electronically mailed to the Planning Commission. The Planning Commission shall approve or disapprove of such proposed improvements based on the following standards:

- (1) Compliance with all Village codes and laws and other governmental laws where required;
- (2) The recommendation of all administrative departments in regard to the improvements;
- (3) The effect of the proposed improvements on the right-of-way and in relation to all other improvements already installed or approved;
- (4) The proposed location of the improvements in regard to such items as sight lines, drainage, safety, and visual interference;
- (5) The size, bulk, and location of the improvements in relation to obtaining proper light, air, privacy, usable open space, and compatibility with surrounding uses;
- (6) The proper screening or placement of the improvements to minimize the negative effects of the improvements on the right-of-way or adjoining uses;
- (7) Compliance with the United States Department of Transportation

Manual on Uniform Traffic Control Devices (MUTCD) and Ohio Department of Transportation Ohio Manual of Uniform Traffic Control Devices (OMUTCD).

(e) Service Provider Insurance. As a condition of the consent to Occupy or Use the Public Right-of-Way, a Service Provider must secure and maintain, at a minimum, the following liability insurance policies insuring both the Service provider and the Village as additional insured and regardless of any other insurance provisions contained in Village ordinances:

- (1) Comprehensive general liability insurance with limits not less than
  - (A) One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, for bodily injury or death to each Person;
  - (B) One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, for property damage resulting from any one accident; and
  - (C) One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, for all other types of liability.

- (2) The liability insurance policies required by this Section shall be maintained by the Service Provider throughout the period of time during which the Service Provider is Occupying or Using the Public Right-of-Way, or is engaged in the removal of its Facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the Village, by registered mail, of a written notice addressed to the Building Commissioner of such intent to cancel or not to renew."

- (3) Within thirty (30) days after receipt by the Village of said notice, and in no event later than fifteen (15) days prior to said cancellation, the Service Provider shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this Section.
- (4) All insurance policies required herein shall be written with an insurance company authorized to do business in the State of Ohio in relation to the specific type of insurance required.
- (5) Upon written application to, and written approval by, the Director of Finance of the Village, a Service Provider may be self-insured to provide all of the same coverages as listed in this Section. As part of the review process, the Director of Finance may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

(f) Each applicant for Consent to Occupy or Use the Right-of-Way shall provide the Village a construction performance and construction completion bond in an amount equal to ten percent (10%) of the applicable construction cost. Such amount shall not exceed two hundred thousand dollars (\$200,000.00).

(g) **General Indemnification.** Each application for consent to Occupy or Use the Public Right-of-Way shall include, to the extent permitted by law, the Service Provider's express undertaking to defend, indemnify and hold the Village and its elected and appointed officers, officials, employees, agents, representatives and subcontractors harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Service Provider or its Affiliates, officers, employees, agents, contractors or subcontractors in the design, Construction, Reconstruction, installation, operation, maintenance, repair or removal of its Small Cell Facility and Wireless Support Structure, and in providing or offering Services over the Small Cell Facility and Wireless Support Structure, whether such acts or omissions are authorized, allowed or prohibited by this Chapter.

### 709.03 GENERAL PUBLIC RIGHT-OF-WAY USE REGULATIONS.

(a) Public Right-of-Way Route. Consent granted to a Service Provider to Occupy or Use the Public Right-of-Way under Section 709.02 shall be limited to a grant to Occupy or Use the specific Public Right-of-Way and defined portions thereof, including the specific Small Cell Facility and Wireless Support Structure and location along the Public Right-of-Way, as approved by the Village.

(b) Nonexclusive Consent to Occupy the Public Right-of-Way. No consent granted under Section 709.02 shall confer any exclusive right, privilege, license or franchise to Occupy or Use the Public Right-of-Way of the Village, other than as specifically provided in said consent.

(c) Rights Permitted. No consent granted under Section 709.02 shall convey any right, title or interest in the Public Right-of-Way, but shall be deemed a consent only to Occupy or Use the Public Right-of-Way for the limited purposes granted by the consent. Further, no consent shall be construed as any warranty of title.

(d) Maximum Permitted Height.

(1) Existing Wireless Support Structures. For an existing Wireless Support Structure, the Antenna and any associated shroud or concealment material are permitted to be Collocated at the top of the existing Wireless Support Structure and shall not increase the height of the existing Wireless Support Structure by more than five (5) feet.

(2) New Wireless Support Structures.

(A) For a new Wireless Support Structure, the overall height of the Wireless Support Structure and any Collocated Antenna

shall not be more than forty (40) feet in height above established grade measured at the base of the Wireless Support Structure.

(B) The Village may limit the maximum permissible height of Wireless Support Structures to not less than thirty-five (35) feet in height above established grade measured at the base of the structure in areas meeting the following criteria:

- (i) The area is within three hundred (300) feet of the proposed site for a new or existing Wireless Support Structure in the same right-of-way or a connecting right-of-way, and where there are no Wireless Support Structures or utility poles taller than thirty (30) feet in height above ground level; and
- (ii) The maximum allowable height for building construction in the underlying or adjacent zoning district is thirty-five (35) feet in height above ground level or less.

(e) Maximum Size. The Small Cell Facility must conform to the size limitations as defined for a Small Cell Facility in Section 709.01(b)(26) of this Chapter.

(f) Color. The Small Cell Facilities shall be a color or colors that are consistent with or most blends into the Wireless Support Structure on which they are installed, unless a different color is needed for public safety or service reliability reasons, all as determined by the Planning Commission.

(g) Wiring and Cabling. Wires and cables connecting the Small Cell Facility shall be installed in accordance with the version of the National Electrical Code adopted by the Village and in force at the time of installation. 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, electric utility, telephone utility or other utility.

(h) Reservation by Village for Future Uses. The Village may reserve space for future public safety or transportation uses in the Public Right-of-Way, or on a Wireless Support Structure or pole owned by the Village. Said reservation of space shall be set forth in a documented plan, subject to the approval of the Planning Commission. A reservation of space by the Village shall not preclude placement of a pole or Collocation of a Small Cell Facility by a Private Service Provider; provided, however, that said pole or Wireless Support Structure shall accommodate any future use reserved by the Village. In the event it is necessary to replace any Village pole or Wireless Support Structure to accommodate the Collocation of a Service Provider's Small Cell Facility, the Service Provider shall pay for the replacement of the Village pole or Wireless Support Structure.

(i) Alternate Location. The Village may propose an alternate location to the proposed location of a new Wireless Support Structure that is either within one hundred (100) feet of the location set forth in a Person's application for Consent to Occupy or use a Public Right-of-Way; or is within a distance that is equivalent to the width of the Public

Right-of-Way that the new Wireless Support Structure is proposed to be located on; whichever is greater. Any applicant or Service Provider shall be required to use the alternate location proposed by the Village, if the applicant or Service Provider has the right to use the alternate location on reasonable terms and conditions, and the alternate location does not impose technical limits or additional costs.

(j) Time for Completion. Any Collocation or Construction of a new Wireless Support Structure shall be completed within one hundred eighty (180) days after the issuance of a Consent to Occupy or Use the Public Right-of-Way. The Village and Service Provider may extend this completion date by mutual agreement.

(k) Underground Placement. No Small Cell Facility or Wireless Support Structure shall be constructed in a Public Right-of-Way that is located in an area in which it was required, or will be required, under the Mayfield Village Codified Ordinance, to install any electric Facilities, telephone Facilities, or any other utility Facilities underground. This prohibition shall not apply to the replacement of a Wireless Support Structure or the Collocation of a Small Cell Facility on a Wireless Support Structure that exists or might exist in said designated area. A Service Provider may apply to the Planning Commission for a waiver of the underground placement requirement for the Construction of a new Wireless Support Structure if the Service Provider is unable to achieve its service objection under the following circumstances:

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

(l) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any Small Cell Facility and Wireless Support Structure, 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 request for consent.

(m) Grounding. The Small Cell Facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the Village regarding grounding of wireless facilities.

(n) Signage. Other than warning or notification signs required by federal law, or identification and location markings or other markings required by the Village, a Small Cell Facility and Wireless Support Structure shall not have signs installed thereon.

(o) Maintenance of Small Cell Facility and Wireless Support Structure. Each Service Provider shall maintain its Small Cell Facility and Wireless Support Structure in good and safe condition and in a manner that complies with all applicable federal, State and local requirements.

(p) Safety Procedures. A Service Provider or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as

necessary and in accordance with applicable State and local requirements for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such Public Right-of- Way or property.

(q) Interference with the Public Right-of-Ways. No Service Provider may locate or maintain its Small Cell Facility and Wireless Support Structure so as to unreasonably interfere with the use of the Public Right-of-Way by the Village, by the general public or by other Persons authorized to use or be present in or upon the Public Right-of-Way. All such Small Cell Facilities and Wireless Support Structures shall be moved by the Service Provider, temporarily or permanently, as determined by the Building Commissioner when necessary to protect the public, comply with the provisions of this Chapter, or otherwise comply with local, state or federal laws. The expense or cost to move said Small Cell Facility and Wireless Support Structure shall be the responsibility of the Service Provider.

(r) Damage to Public and Private Property. No Service Provider nor any Person acting on the Service Provider's behalf shall take any action or permit any action to be done which may impair or damage any Village Property, Public Right-of-Way, or other public or private property located in, on or adjacent thereto.

(s) Restoration of Public Right-of-Way, Other Ways and Village Property.

- (1) When a Service Provider, or any Person acting on its behalf, does any work in or affecting any Public Right-of-Way or Village Property, it shall, after the work is completed and at its own expense, promptly remove any obstructions therefrom and restore such ways or property, within ten (10) to thirty (30) days, at the Building Commissioner's discretion, to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village.
- (2) If weather or other conditions do not permit the complete restoration required by this Section, the Service Provider shall temporarily restore the affected ways or property as directed by the Building Commissioner. Such temporary restoration shall be at the Service Provider's sole expense and the Service Provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(t) Damage to Service Provider's Small Cell Facility and Wireless Support Structure. Unless directly and proximately caused by the willful, intentional or malicious acts of the Village, the Village shall not be liable for any damage to or loss of any Small Cell Facility or Wireless Support Structure in the Public Right-of-Way of the Village as a result of or in connection with, but not limited to, any public works, public improvements, Construction, Excavation, grading, filling, salting, snow removal or work of any kind in the Public Right-of-Way by or on behalf of the Village.

(u) Duty to Provide Information. Within ten (10) days of a written request from

the Village, each Service Provider shall furnish the Village with documentation sufficient to show that the Service Provider has complied with all requirements of this Chapter.

(v) Assignments or Transfers of Consent. Consent to Occupy or Use the Public Right-of-Way may be, directly or indirectly, transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Service Provider, by operation of law or otherwise, without consent of the Village, so long as:

- (1) The Village is notified of the proposed transfer on or before the date of transfer; and
- (2) The transferee shall fully comply with this Chapter within sixty (60) days of the transfer, including, but not limited to:
  - (A) All information required by the application for consent to Occupy or Use the Public Right-of-Way pursuant to Section 709.02 of this Chapter; and
  - (B) Any other information reasonably required by the Village.

(w) Revocation of Consent. Consent granted by the Village to Occupy or Use the Public Right-of-Way of the Village may be revoked for any one of the following reasons:

- (1) Construction, Reconstruction, installation, location, operation or Excavation at an unauthorized location.
- (2) Construction, Reconstruction, installation, location, operation or Excavation in violation of Village safety and/or Construction requirements.
- (3) Material misrepresentation or lack of candor by or on behalf of a Service Provider in any Permit application or registration required by the Village.
- (4) Abandonment of Small Cell Facility and/or Wireless Support Structure in the Public Right-of-Way. Abandonment shall be defined as 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 Village and receiving the Village's approval.
- (5) Failure to relocate or remove a Small Cell Facility and/or Wireless Support Structure or failure to restore the Public Right-of-Way, as required by this Chapter.
- (6) Insolvency or bankruptcy of the Service Provider.
- (7) The Small Cell Facility and/or Wireless Support Structure is in a state of disrepair which creates a public nuisance.
- (8) Violation of material provisions of this Chapter.
- (9) Construction under the consent is not commenced within two (2) years of the consent approval date.

(x) Notice and Duty to Cure. In the event that the Building Commissioner believes that grounds exist for revocation of consent to Occupy or Use the Public Right-of-Way or Construction Permit, the Building Commissioner shall give the Service Provider written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and

providing the Service Provider a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- (2) That rebuts the alleged violation or noncompliance; and/or
- (3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(y) Municipal Structures. A Service Provider may Collocate a Small Cell Facility on a Wireless Support Structure owned by the Village and which is located in the Public Right-of-Way, provided that the Person complies with applicable design guidelines and conditions for such Collocation adopted by the Village that are consistent with said design guidelines under this Chapter. The Village may condition approval of said Collocation on the replacement or modification of the Village's Wireless Support Structure, at the Service Provider's cost, if the Village determines that replacement or modification of the Village's Wireless Support Structure is necessary. The Village shall retain ownership of any Village Wireless Support Structure that is replaced. The Village shall annually charge the amount of Two Hundred Dollars (\$200.00) per each Small Cell Facility Collocated on a Wireless Support Structure owned by the Village and located in the Public Right-of- Way.

#### 709.04 LOCATION, RELOCATION AND REMOVAL OF MICRO SMALL CELL FACILITY AND WIRELESS SUPPORT STRUCTURE

(a) Excess Capacity. To reduce Excavation and congestion in the Public Right-of-Way, it is the Village's goal to encourage Service Providers to share occupancy of Utility Poles, as well as to construct, whenever possible, excess available space on Utility Poles and Wireless Support Structures for occupancy of future Small Cell Facilities in the Public Right-of-Way. The Service Provider may charge a reasonable market lease rate to other Providers for occupancy of the additional utility pole space as reimbursement.

(b) Relocation or Removal of Facilities. Within thirty (30) days following written notice from the Village, a Service Provider shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Small Cell Facility and Wireless Support Structure in the Public Right-of-Way whenever the Village shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (1) The Construction, Reconstruction, repair, maintenance or installation of any Village or other public improvement in or upon the Public Right-of-Way.
- (2) The operations of the Village or other governmental entity in or upon the Public Right-of-Way.

(c) Removal of Unauthorized Small Cell Facility and Wireless Support Structure. Within thirty (30) days following written notice from the Village, any Service

Provider or other Person that owns, controls or maintains any unauthorized Small Cell Facility, Wireless Support Structure or related appurtenances in the Public Right-of-Way shall, at its own expense, remove the Small Cell Facility, Wireless Support Structure or appurtenances from the Public Right-of-Way of the Village. After the thirty (30) days have expired, the Village may remove the Small Cell Facility, Wireless Support Structure or appurtenances from the Public Right-of-Way at the other party's expense. A Small Cell Facility and Wireless Support Structure is unauthorized and subject to removal in the following circumstances:

- (1) Upon revocation of the Service Provider's consent to Occupy or Use the Public Right-of-Way;
- (2) Upon abandonment of a Small Cell Facility and Wireless Support Structure in the Public Right-of-Way of the Village;
- (3) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located or maintained without the consent to do so, except as otherwise provided by this Chapter;
- (4) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, without prior issuance of a required Construction Permit, except as otherwise provided by this Chapter;
- (5) If the Small Cell Facility and Wireless Support Structure was Constructed, Reconstructed, installed, operated, located or maintained, or any Excavation of a Public Right-of-Way was performed, at a location not permitted pursuant to the Village's consent to Occupy or Use the Public Right-of-Way or Construction Permit;

(d) Emergency Removal or Relocation of Small Cell Facility and Wireless Support Structure. The Village retains the right and privilege to cut or move any Facilities, or stop work on any Construction, Reconstruction, installation, operation or Excavation, located in the Public Right-of-Way of the Village, as the Village may determine to be necessary, appropriate or useful in response to any need to protect the public health, safety or welfare.

**709.05 NOTICE OF WORK, ROUTINE MAINTENANCE AND EMERGENCY WORK.**

(a) Notice of Work. Except in case of Emergency, as provided in Section 709.05(c), or for Routine Maintenance as provided in Section 709.05(b), no Service Provider, or any Person acting on the Service Provider's behalf, shall commence any work in the Public Right-of-Way of the Village without twenty-four (24) hours advance notice to the Village, obtaining consent to Occupy or Use the Public Right-of-Way pursuant to Section 709.02, if required.

(b) Routine Maintenance and New Service Orders.

- (1) A Service Provider need not obtain a Construction Permit or notify the Village prior to or after commencing any Routine Maintenance or New Service Orders that do not include the Construction in, or Excavation or Lane obstruction of, a Public Right-of-Way or closing of a Public Street.
- (2) For Routine Maintenance and New Service Orders that require the Service Provider to cause a Lane Obstruction in a Public Street for more than two (2) hours, the Service Provider shall provide the Village with forty-eight (48) hours advance written notice prior to commencing the Routine Maintenance or New Service Order, and shall submit a drawing showing the planned traffic maintenance and indicating how the Service Provider will meet all requirements of ODOT's Manual of Traffic Control Devices or other applicable governmental regulations.

(c) Emergency Work. In the event of the need for any unexpected repair or Emergency work, a Service Provider may commence such Emergency response work as required under the circumstances, provided that for Emergency work that requires Excavation of a Public Right-of-Way or Lane Obstruction or closing of a Public Street, the Service Provider shall notify the Village as promptly as possible before commencing such Emergency work, or as soon as possible thereafter if advance notice is not practicable. When notice is required, the Service Provider shall notify the Building Commissioner.

#### 709.06 RECOVERY OF COSTS.

(a) Application Processing Fee. For processing an application for consent, the Village 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 or with associated application forms which shall be made available by the Village. The Village may adjust this fee ten percent (10%) every five years, rounded to the nearest five dollars.

(b) Annual Collocation Fee. For reimbursement for operator's attachment of small cell facilities to wireless support structure owned or operated by the Village and located in the right-of-way, the Village may charge an annual fee as prescribed in Section 4939.022 of the Ohio Revised Code and as listed on or associated with application forms which shall be made available by the Village. The Village may adjust this fee ten percent (10%) every five years, rounded to the nearest five dollars.

(c) Tax Liabilities and Assessments Not Applicable. Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the Village to any state or local tax liabilities or assessments.

**709.07 MISCELLANEOUS PROVISIONS.**

(a) Other Village Ordinances. In the event that any provision of this Chapter conflicts with any other provision of the Village's Codified Ordinances or other ordinances or resolutions of the Village, the more restrictive provision shall govern.

(b) Preemption by State and Federal Law. Except as may be preempted by applicable State or Federal law, rates, regulations, and orders, this Chapter shall apply and be controlling over each Service Provider engaged in the business of transmitting, supplying or furnishing of Services originating, passing through, or terminating in the Village.

(c) Exemption for Village-Owned or Operated Facilities. Nothing in this Chapter shall be construed to apply the provisions of this Chapter to Facilities, Facility, Small Cell Facility, Wireless Support Structure or Private Facility owned or operated by the Village or any of its operations.

(d) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

**709.99 PENALTIES AND OTHER REMEDIES.**

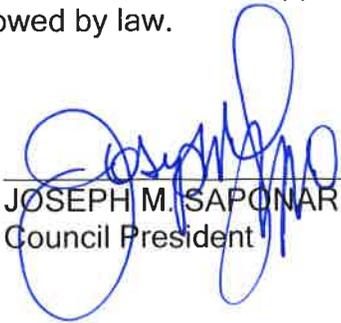
(a) Penalties. Any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct Offense shall be deemed committed each day on which a violation occurs or continues.

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

**Section 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and of any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

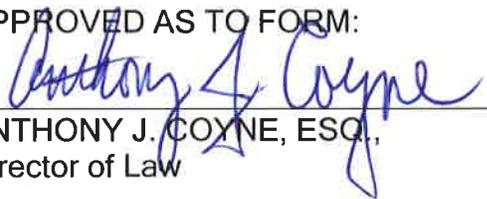
**Section 3.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the Village, and for the further reason that there is a need to accommodate and manage the increasing demand for the use of public rights-of-way within the Village. It Shall, therefore, take effect immediately upon passage by the

affirmative vote of not less than five (5) members elected to Council and approval by the Mayor; otherwise from and after the earliest period allowed by law.

  
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JOSEPH M. SAPONARO  
Council President

First Reading: August 20, 2018  
Second Reading: Suspended, 2018  
Third Reading: Suspended, 2018  
PASSED: August 20, 2018

  
\_\_\_\_\_  
BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
ANTHONY J. COYNE, ESQ.,  
Director of Law

ATTEST:  
  
\_\_\_\_\_  
MARY E. BETSA, MMC  
Clerk of Council