

## SMALL WIRELESS FACILITIES IN THE CITY RIGHT OF WAY ORDINANCE

### Section 1 – Purpose and Compliance.

(a) O.C.G.A. § 32-4-92(a)(10) authorizes the City of Maysville, Georgia (the “City”) to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act, O.C.G.A. Title 36, Chapter 66C (the “SWFAA”), addresses the placement of small wireless facilities in the public rights of way of the City.

(b) The City finds it is in the best interest of the City and its residents and businesses to establish requirements, specifications, and reasonable conditions regarding the placement of small wireless facilities and poles in the public rights of way. These requirements, specifications, and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

(c) The objective of this Ordinance is (i) to implement the SWFAA and (ii) to ensure that the use of the public rights of way is consistent with the design, appearance, and other features of nearby land uses, and to protect the integrity of historic, cultural, and scenic resources and the quality of life of the City’s residents.

### Section 2 – Definitions.

Unless defined below, terms used in this Ordinance shall have the meanings given to them in O.C.G.A. § 36-66C-2.

“Authority” shall mean and refer to the City of Maysville, Georgia.

In the event that any federal or state law containing definitions used in this Ordinance is amended, the definition in the referenced section, as amended, shall control.

### Section 3 – Permits.

(a) A permit is required to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or decorative pole in the public right of way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).

(b) Any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way shall submit an application to the City Clerk for a permit. Applications are available from the City Clerk. Any material change to information contained in an application, including a change in ownership of the small wireless facility or pole, shall be submitted in writing to the City Clerk within 30 days after the events necessitating the change.

(c) Each application for a permit shall include the maximum application fees permitted under O.C.G.A. § 36-66C-5(a)(1), (a)(2), and (a)(3). Such maximum application fees shall automatically increase on January 1 of each year beginning on January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

(d) The City Clerk shall review applications for permits according to the timelines and using the procedures identified in O.C.G.A. §§ 36-66C-7 and 36-66C-13.

(e) Applications for permits shall be approved except as follows:

(1) In order to receive a permit to install a pole or replace a decorative pole, the applicant must have determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which: (i) the applicant has the right to collocate subject to reasonable terms and conditions; and (ii) such collocation would not impose technical limitations or significant additional costs. The applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(2) The City Clerk may deny an application for a permit upon any of the conditions identified in O.C.G.A. § 36-66C-7(j).

(3) For applications for new poles in the public right of way in areas zoned for residential use, the City Clerk may propose an alternate location in the public right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the City Clerk's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

(f) A permit issued under this Section 3 shall authorize such person to occupy the public rights of way to:

(1) Collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. § 36-66C-12; and

(2) Install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(1) and (h)(2).

A permit issued under this Section 3 shall not create a property right or grant authorization or license to the applicant to impinge upon the rights of other persons that may already have an interest in the right of way.

(g) Upon the issuance of a permit under this Ordinance, and on each anniversary of such issuance, every person issued a permit shall submit to the City the maximum annual payments permitted under O.C.G.A. § 36-66C-5(a)(4) and (a)(5); provided however, that if such person removes its small wireless facilities from the public rights of way pursuant to O.C.G.A. § 36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual payment obligations under this Section shall cease as of the date of the actual removal. The maximum annual payments due under this subsection (g) shall automatically increase on January of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

(h) Any person issued a permit shall pay the fees identified in O.C.G.A. § 36-66C-5(a)(6) and (a)(7), as applicable.

(i) The City may revoke a permit issued pursuant to this Section 3 if the wireless provider or its equipment placed in the public right of way under that permit subsequently is not in compliance with any provisions of this Ordinance or the SWFAA. Upon revocation, the City may proceed according to subsection (j) of this Section.

(j) If a wireless provider occupies the public rights of way without obtaining a permit required by this Section 3 or without complying with the SWFAA, then the City may, at the sole discretion of the City, restore the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the unpermitted collocation or installation and then charge the responsible wireless provider the reasonable, documented cost of the City in doing so, plus a penalty not to exceed \$1,000.00. The City may suspend the ability of the wireless provider to receive any new permits from the City under this Section 3 until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided however, that the City may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(k) All accepted applications for permits shall be publicly available subject to the limitations identified in O.C.G.A. § 36-66C-6(c).

(l) An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. § 36-66C-13.

(m) Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. § 36-66C-7(k)(2).

(n) Issuance of a permit authorizes the applicant to:

(1) Undertake the collocation, installation, modification, or replacement approved by the permit, and

(2) Operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of ten years.

(o) Permits shall be renewed following the expiration of the term identified in subsection (n) of this Section upon the terms and conditions identified in O.C.G.A. § 36-66C-7(k)(2)(B).

(p) If an application for a permit seeks to collocate small wireless facilities on City poles in the public rights of way, then the City shall, within 60 days of receipt of the completed application:

(1) Provide a good faith estimate for any make-ready work necessary to enable the City pole to support the proposed facility; or

(2) Notify the wireless provider that the wireless provider will be required to perform the make-ready work.

Any make-ready work performed by the City shall be completed pursuant to and in accordance with O.C.G.A. § 36-66C-7(n).

#### **Section 4 – Resolution of Conflicting Requests.**

If multiple applications are received by the City to install two or more poles or decorative poles at the same location or to collocate two or more small wireless facilities on the same pole, decorative pole, or support structure, the City shall resolve conflicting requests by resolving the conflict in favor of the first application deemed complete.

#### **Section 5 – Removal; Relocation; Reconditioning; Replacement; Abandonment; Damage.**

(a) An applicant or wireless provider may remove its small wireless facilities from the public rights of way according to the procedures of O.C.G.A. § 36-66C-5(e).

(b) In the event of a removal under subsection (a) of this Section, the right of way shall be, to the extent practicable in the reasonable judgment of the City, restored to its condition prior to the removal. If an applicant or wireless provider fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the removal within 90 days of the removal, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the applicant or wireless provider the City's reasonable, documented cost of removal and restoration, plus a penalty not to exceed \$500.00. The City may suspend the ability of the applicant or wireless provider to receive any new permits under Section 3 until the applicant or wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided however, that the City will not suspend such ability of any applicant or wireless provider that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(c) If, in the reasonable exercise of police powers, the City requires the widening, repair, reconstruction, or relocation of a public road or highway, or the relocation of poles, support structures, or small wireless facilities is required as a result of a public project, and the City finds that poles and support structures unreasonably interfere with the widening, repair, reconstruction or relocation project or the public project, then the wireless provider shall relocate such poles and support structures pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(l). If the wireless provider fails to relocate a pole or support structure or fails to provide a written good faith estimate of the time needed to relocate a pole or support structure within the time period prescribed in O.C.G.A. § 36-66C-7(l), the City may take the actions authorized by O.C.G.A. § 36-66C-7(o), in addition to any other powers under applicable law.

(d) The City shall recondition and replace City poles consistent with the provisions of O.C.G.A. § 36-66C-7(m). Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. § 36-66C-7(m).

(e) A wireless provider must notify the City of its decision to abandon any small wireless facility, support structure, or pole pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. § 36-66C-7(p) regarding abandonment. The City may take all actions and exercise all powers authorized under O.C.G.A. § 36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.

(f) The City may require a wireless provider to repair all damage to a right of way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or

maintaining small wireless facilities, poles, or support structures, in such right of way and to restore the right of way to its condition before the damage occurred pursuant to the competitively neutral and reasonable requirements and specifications of the City. If the wireless provider fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the damage within 90 days of receipt of written notice from the City, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the wireless provider its reasonable, documented cost of doing so, plus a penalty not to exceed \$500.00. The City may suspend the ability of the wireless provider to receive any new permits from the City until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided however, that the City shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

### **Section 6 – Standards.**

(a) Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right of way as a permitted use: (i) upon a receipt of a permit under Section 3; (ii) subject to applicable codes; and (iii) so long as such small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the applicable provisions of O.C.G.A. § 36-66C-7(h).

(b) New, modified, or replacement poles installed in the right of way in a historic district and/or in an area zoned primarily for residential use shall not exceed 50 feet above ground level.

(c) Each new, modified, or replacement pole installed in the right of way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:

(1) Fifty feet above ground level; or

(2) Ten feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole.

(d) New small wireless facilities in the public right of way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.

(e) New small wireless facilities in the public right of way collocated on a new or replacement pole under subsections (b) or (c) of this Section may not extend above the top of such poles.

(f) A decorative pole should only be located where an existing pole can be removed or replaced, or at a new location where the City has identified that a streetlight, traffic control device, or associated structure is necessary.

(g) Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:

(1) Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure or concealed such that the antenna appears to be part of the pole or support structure.

(2) Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure, or be designed and placed to minimize visual impacts.

(3) Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.

(4) Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.

(h) Notwithstanding any provisions of this Ordinance to the contrary, an applicant may collocate a small wireless facility within a historic district, and may place or replace a pole within a historic district, only upon satisfaction of the following: (i) issuance of a permit under Section 3 and (ii) compliance with applicable codes.

(i) Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following: (i) issuance of a permit under Section 3 and (ii) compliance with applicable codes.

#### **Section 7 – Safety.**

(a) An applicant or wireless service provider in the right of way shall employ due care during the installation and maintenance process and shall comply with all safety and right of way protection requirements of general applicability set forth in applicable law.

(b) An applicant or wireless service provider in the right of way shall not place any small wireless facilities, support structures, poles, or decorative poles where they will interfere with any existing infrastructure or equipment, including traffic signal equipment, and shall locate its lines and equipment in such a manner as not to interfere unnecessarily with the usual vehicular or pedestrian traffic patterns or with the rights or reasonable convenience of owners of property that abuts any right of way.

(c) If the authority determines that a wireless provider's activity in a right of way pursuant to this Chapter creates an imminent risk to public safety, the City may provide written notice to the wireless provider and demand that the wireless provider address such risk. If the wireless provider fails to reasonably address that risk within 24 hours of the written notice, the authority may take or cause to be taken action to reasonably address such risk and charge the wireless provider the reasonable documents costs of such actions.

ASH/JML/7686/W229611

Adopted: 6/25/2020

Adopted by the City Council of the City of Maysville, Georgia at a meeting held on

June 25, 2020.

Mayor:

Richard Purdy

Council:

Kathleen G. Bush

Kathleen Bush

Junior Hardy

Junior Hardy

Richard Parr

Richard Parr

Scott Harper

Scott Harper

Witnessed By:

Barbara Thomas

City Administrator/City Clerk

6-25-2020

Date: