

**ORDINANCE NO. 66-18**

**AN ORDINANCE ENACTING CHAPTER 1031 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO ADOPT SMALL CELL DESIGN GUIDELINES AND DECLARING AN EMERGENCY**

**WHEREAS**, Substitute House Bill 478 (Sub. H.B. 478) will go into effect on July 31, 2018; and

**WHEREAS**, Substitute House Bill 478 amends Ohio Revised Code Chapter 4939 to provide, among other things, that municipalities may adopt reasonable, written design guidelines with objective, technologically feasible criteria to regulate small cell facilities and wireless support structures; and

**WHEREAS**, this Council believes that enacting new Chapter 1031 and adopting Small Cell Design Guidelines promotes the public health, safety and welfare of the City and its residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:**

Section 1 – That Chapter 1031 of the Codified Ordinances of the City of Avon entitled “Small Cell Design Guidelines,” shall be enacted to read as follows:

**CHAPTER 1031  
SMALL CELL DESIGN GUIDELINES**

**1031.01 OVERVIEW AND PURPOSE, DEFINITIONS.**

- (a) The purpose of these Design Guidelines is to:
- (1) Protect the health, safety, and welfare of the citizens of the City;
  - (2) Preserve the character of the City’s neighborhoods and historic districts;
  - (3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities; and
  - (4) Comply with, and not conflict with or preempt, all applicable state and federal laws.
- (b) For the purpose of this chapter, and the interpretation and enforcement hereof, 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) “Applicant” means any person or entity who submits an Application pursuant to this Chapter.

- (2) “Application” means the form issued by the City Planning Department to be submitted by an Applicant to the City Planning Coordinator to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
- (3) “Accessory Equipment” means equipment used in conjunction with a Small Cell Facility and generally at the same location as, or in proximity to, the Small Cell Facility including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.
- (4) “City” means City of Avon, Ohio.
- (5) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
- (6) “Design Guidelines” means the standards established in this Chapter 1031 of the Avon Codified Ordinances.
- (7) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (8) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
  - (A) Operators;
  - (B) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
  - (C) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.
- (9) “Historic district” means a building, property, or site, or group of buildings, properties, or sites that are either of the following:
  - (A) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the

- nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;
- (B) A registered historic district as defined in section 149.311 of the Revised Code.
  - (C) On the register of Avon landmarks established pursuant to Article XIV, Section 2 of the Charter of the City of Avon.
- (10) “Operator” means a wireless service provider, cable operator, or video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator, or a video service provider that provides information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.
  - (11) “Public Way” or “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 City or other public entity or political subdivision.
  - (12) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
  - (13) “Small Cell Facility” means a wireless facility that meets both of the following requirements:
    - (A) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and
    - (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. “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
  - (14) “Small Cell Use Permit” means the permit granted by the City authorizing an Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

- (15) “Underground Area” means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structures and facilities owned by the City or a transit authority, are located underground.
- (16) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. 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; and
  - (B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

#### **1031.02 GENERAL STANDARDS**

- (a) Facilities shall not be installed unless the Facilities are compliant with these Design Guidelines, Chapter 1032 of the Codified Ordinances and any Application requirements, and all applicable local, state, and federal laws.
- (b) A Facilities Operator shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in an Application for a Small Cell Use Permit.
- (c) All work shall be performed in a professional manner consistent with the highest standards of workmanship.
- (d) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.
- (e) Facilities shall not be installed in any location that causes any interference with the City’s public safety radio system, traffic and emergency signal light system, or other City safety communications systems or system components.
- (f) The City may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible.
- (g) Facilities shall not interfere with existing or planned street trees.
- (h) Signage shall be mounted on all new Facilities providing the Facilities Operator’s name, an emergency contact phone number, an informational contact number, and all other information required by law. Unless otherwise prohibited by law,

signage shall be discreet in color and shall match the Facilities and surrounding area and font size used on the sign shall be no smaller than 9 point font and no larger than 14 point font.

- (i) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from Facilities.
- (j) Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.
- (k) The City may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but shall not be limited to, fencing, public art, strategic placement, and placement within existing or replacement street furniture.
- (l) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.
- (m) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the City, and the color shall match the Facilities. The City may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the City determines a non-matching color would better fulfil the purposes of these Design Guidelines.
- (n) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facility Operator's sole expense as soon as practicable, but no later than **thirty (30)** ~~ten (10)~~ days from the date the Facilities Operator receives notice of the graffiti.

### **1031.03 SPECIFICATIONS FOR COLLOCATION**

- (a) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.
- (b) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least eight (8) feet above ground level. If Small Cell Equipment is projecting toward the street then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level.

### **1031.04 ANTENNAS**

- (a) Antennas and Accessory Equipment must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.
- (b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet.

- (c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister or other shroud. All Accessory Equipment associated with the antenna shall be concealed and shall not visibly protrude from the shroud or canister.
- (d) The width of the canister or other shroud encasing the antenna and Accessory Equipment shall not exceed the width of the **topmost narrowest** portion of the Wireless Support Structure, **or ten inches in diameter, whichever is less.**
- (e) The enclosure or shroud shall be painted to match or complement the Wireless Support Structure.
- (f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.
- (g) Antennas shall not impair light or **substantially obstruct** views from adjacent window(s).
- (h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The City may approve a side-mounted antenna if, in the City's discretion, the side-mounted antenna would be more appropriate given the built environment, neighborhood character, overall site appearance or would otherwise promote the purposes in these Design Guidelines.

#### **1031.05 WIRELESS SUPPORT STRUCTURE-MOUNTED EQUIPMENT**

- (a) All Wireless Support Structure-mounted Small Cell Equipment other than the antenna(s) and electric meter must be concealed within an equipment cabinet.
- (b) Equipment cabinets shall be mounted flush to the Wireless Support Structure.
- (c) Equipment cabinets shall be stacked together on the same side of the Wireless Support Structure and oriented away from any windows and doorways to minimize visual impacts thereupon.
- (d) The equipment cabinets must be non-reflective and painted, wrapped or otherwise colored to match the Wireless Support Structure.

#### **1031.06 GROUND-MOUNTED SMALL CELL EQUIPMENT**

- (a) The City shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant (1) proposes the ground-mounted equipment in connection with a Collocation, and (2) shows that the equipment cannot be feasibly placed on the Wireless Support Structure or in an underground vault.
- (b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not technically feasible, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.

- (c) All ground-mounted Small Cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.
- (d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in any way.

#### **1031.07 CABLES**

- (a) All cables, conduit and wiring shall be located inside conduit and inside the Wireless Support Structure or an equipment cabinet.
- (b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible.

#### **1031.08 ELECTRICAL METERS**

- (a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.
- (b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

#### **1031.09 UTILITY LINES**

- (a) Service lines shall be underground to avoid additional overhead lines. The underground cables and wires must transition directly into the Wireless Support Structure base without any external junction box.

#### **1031.10 SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES**

- (a) A Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:
  - (1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or
  - (2) An existing Wireless Support Structure is located within 100 feet of the proposed site of a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

- (b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the City.
  - (1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the City.
  - (2) The City may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.
- (c) Except in those zoning districts where the height limit is 35 feet or lower, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level. The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in zoning districts where the height limit is 35 feet or lower, so long as there is no Wireless Support Structure or utility pole taller than thirty (30) feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure.
- (d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the City.
- (e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the City.
  - (1) If partially removed, the original Wireless Support Structure foundation shall be taken back to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half ( $\frac{1}{2}$ ) inch to three-quarter ( $\frac{3}{4}$ ) inch compose of rock material. The remaining eight (8) shall be native soil.
  - (2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The type of backfill material and compaction required is: (a) one-half ( $\frac{1}{2}$ ) sack slurry for the entire depth in paved areas, and (b) one-half ( $\frac{1}{2}$ ) sack slurry for the entire depth except the top twelve (12) inches will be native soil in landscaped areas.

#### **1031.11 SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES**

- (a) New Wireless Support Structures shall be designed and constructed to accommodate **at least two sets of Small Cell Equipment** ~~from at least two (2) wireless service providers~~ on the same Wireless Support Structure.



- (b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles.
- (c) In residential districts, new Wireless Support Structures shall be located at the shared property line between two residential parcels where the parcels intersect the Right-of-Way **when available**.
- (d) In non-residential districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines where the parcels intersect the Right-of-Way **when available**.
- (e) New Wireless Support Structures shall not interfere with any metered parking space.
- (f) A new Wireless Support Structure shall not be located in front of a building entrance or exit.
- (g) Except in zoning districts where the height limit is thirty-five (35) feet or lower, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level. The overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in those zoning districts where the building height limit is thirty-five (35) feet or lower so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed new Wireless Support Structure.
- (h) The City may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure. Unless otherwise specified by the City, new wood Wireless Support Structures are prohibited in the following zoning districts:
  - (1) Any Residential District; or
  - (2) Any Office District; or
  - (3) Any Commercial or Industrial district that has underground utilities.

### **1031.12 HISTORIC DISTRICT REGULATIONS**

Except antennas, all Small Cell Equipment to be located in the Right-of-Way in the French Creek District shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the City may specify, as long as such measures do not have the effect of prohibiting the Facilities Operator's provision of service. Such measures are not considered part of the small cell facility for purposes of facility size restrictions in this Chapter or Chapter 1032 of the Codified Ordinances. If such measures are

technologically infeasible then the Facilities Operator may submit a waiver pursuant to Section 1031.13(d) .

### **1031.13 UNDERGROUND AREA REGULATIONS**

- (a) Subject to subsection (b), a Facilities Operator shall locate its Facilities underground in an Underground Area.
- (b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an Existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.
- (c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.
- (d) An Operator may apply to the City for a waiver of the underground placement requirement if the requirement prevents the Facilities Operator from achieving its service objective and the Facilities Operator is unable to achieve its service objective by placing Facilities at:
  - (1) A location in the public Right-of-Way where the prohibition does not apply;
  - (2) A utility easement the service provider has the right to access; and
  - (3) Other suitable locations or structures made available by the City at reasonable rates, fees and terms.
- (e) Submission of a waiver pursuant to subsection (d) is subject to the Facilities Operator's agreement to toll the timeframes set forth in Section 1031.08(a) of the Codified Ordinances by fourteen (14) days.

### **1031.14 DISCRETIONARY WAIVER**

**It is within the City's reasonable discretion to waive a portion or portions of this Chapter, as permitted under state and federal law, where such requirements in the City's judgment, are not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.**

### **1031.99 PENALTIES; EQUITABLE REMEDIES**

- (a) Any person or entity found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.

- (b) If a Facilities Operator fails to comply with these Design Guidelines, Chapter 1032 of the Codified Ordinances, or the provisions set forth in Chapter 4939 of the Revised Code, the City may terminate the Facility Operator’s Small Cell Use Permit.
- (c) Nothing in this Chapter shall be construed as limiting any judicial remedies that the City 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 the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3- That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to adopt legislation and design guidelines for the installation of small cell equipment and facilities before July 31, 2018, the effective date of H.B. 478; therefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: \_\_\_\_\_ DATE SIGNED: \_\_\_\_\_

By: \_\_\_\_\_  
 Craig L. Witherspoon, Council President

DATE APPROVED BY THE MAYOR: \_\_\_\_\_

\_\_\_\_\_  
 Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
 John A. Gasior, Law Director

ATTEST:

\_\_\_\_\_  
 Barbara Brooks  
 Clerk of Council

Posted: \_\_\_\_\_  
In Five Places as  
Provided by Council

Prepared By:  
John A. Gasior, Esq.  
Law Director