



EMERGENCY

## City of Cincinnati

LDM/B 

# An Ordinance No. 308

- 2016

**ORDAINING** new Chapter 719, “Wireless Communications Facilities,” of Title VII, “General Regulations,” of the Cincinnati Municipal Code to provide wireless communications companies and their customers with access to the right of way, in order to comply with federal law and Federal Communications Commission regulations regarding wireless facilities, to establish clear rules for the siting of wireless communications facilities in the right of way, and to protect the City’s interests in preserving the right of way aesthetically and as a pedestrian-friendly thoroughfare.

WHEREAS, wireless carriers and companies that build infrastructure to support wireless communications equipment, or wireless communications facilities, have sought and are seeking to install wireless communications facilities in the right of way, whether by attaching to existing structures or, more commonly, by installing new structures; and

WHEREAS, federal law authorizes the Federal Communications Commission (FCC) to establish rules related to installing, or siting, wireless communications facilities, the FCC has promulgated such rules, and the rules are applicable to local governments nationwide; and

WHEREAS, Council desires to create rules and regulations governing the placement of wireless communications facilities in the right of way to address the increasing demand to install structures in the right of way in a manner that complies with the FCC requirements, treats applicants equally, clearly communicates the standards for the City’s decisions regarding applications, and ensures that wireless carriers can provide coverage to customers in the City; and

WHEREAS, Council desires that the rules governing the receipt of and response to applications to locate facilities in the right of way also preserve the character and aesthetic appeal of the City’s neighborhoods and avoid excessive structures in the right of way that could create safety hazards or impede the comfortable flow of pedestrian traffic; and

WHEREAS, establishing rules and processes for wireless communications facilities is in accordance with the guiding policy principle to “Preserve our resources and facilitate sustainable development” as described on page 81 of Plan Cincinnati (2012), the Compete goal to “Foster a climate conducive to growth, investment, stability, and opportunity” as described on page 103, the Live goal to “Create a more livable community” as described on page 156, and the Sustain goal to “Preserve our natural and built environment” as described on page 197; and

WHEREAS, Council finds it appropriate to ordain a new system of rules to govern wireless communications facilities in the right of way and to provide for the public health, safety, morals, and general welfare; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Chapter 719, “Wireless Communications Facilities in the Right of Way,” of Title VII, “General Regulations,” of the Cincinnati Municipal Code is hereby ordained to read as follows:

**CHAPTER 719 - WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT OF WAY**

**Sec. 719-1. - Purpose and Goals.**

The purpose of this chapter is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, collocation, modification, operation, and removal of wireless communications facilities in the right of way. The goals of this chapter are to:

- (a) Provide standards for the siting, construction, installation, collocation, modification, operation, and removal of wireless communications facilities in the city’s right of way and for payment of fees and charges to be uniformly applied to all applicants and owners of wireless communications facilities or support structures for such facilities.
- (b) Establish basic criteria for applications to site wireless communications facilities in the right of way and authorize the director of the department of transportation and engineering to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants.
- (c) Ensure that wireless communications facilities will conform to all applicable health and safety regulations and will blend into their environment to the greatest extent possible.
- (d) Enhance the ability of wireless communications carriers to deploy wireless infrastructure in the city quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability.
- (e) Preserve the character of the city’s neighborhoods and historic districts.
- (f) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

**Sec. 719-2. - Applicability.**

- (a) *Existing wireless communications facilities.* Wireless communications facilities for which a permit has been issued prior to the effective date of this chapter shall not be required to meet the requirements of this chapter, except as set forth in Section 719-17, Nonconforming Wireless Communications Facilities.
- (b) *Exclusion for amateur radio facilities.* This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- (c) *Exclusion for certain over-the-air receiving devices.* This chapter shall not govern the installation of any OTARD antennas covered under FCC regulations codified in 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.
- (d) *Exclusion for handsets and user equipment.* This chapter shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the public right-of-way.
- (e) *Relationship to other chapters.* This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of wireless communications facilities in the right of way.

**Sec. 719-3. - General Definitions.**

For the purposes of this Chapter 719 and except where expressly provided in Section 719-4, “Definitions Applicable to Type I Applications for Minor Modifications,” the following words and phrases used in this Chapter 719 shall have the meanings ascribed to them in this Section 719-3, regardless of whether or not the words and phrases are capitalized.

**Sec. 719-3-A1. - Antenna.**

“Antenna” means any apparatus designed for the purpose of the transmission and/or reception of radio frequency (“RF”) radiation, to be operated or operating from a fixed location to facilitate wireless communications services including but not limited to the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds.

**Sec. 719-3-A1. - Applicant.**

“Applicant” means any person that submits an application to the city to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the right of way.

**Sec. 719-3-B. - Base Station.**

“Base Station” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended and interpreted by the FCC and any other authority with competent jurisdiction, which defines that term as follows:

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a Tower.

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

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

(iii) The term includes any structure other than a Tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)–(ii) of this section.

As an illustration and not a limitation, the FCC’s definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on utility poles and other structures in the right of way, light standards, or traffic signals when such structure is approved by the city as an appropriate support for wireless transmission equipment. An existing structure without wireless equipment replaced with a new one designed to bear the additional weight from wireless equipment constitutes a base station.

**Sec. 719-3-C. - Collocation.**

“Collocation” means the mounting or installation of a Wireless Communications Facility on an existing Eligible Support Structure or Potential Support Structure for the

purpose of transmitting and/or receiving radio frequency signals for communications purposes, as more specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended or superseded.

**Sec. 719-3-D1. - Design Guidelines.**

“Design Guidelines” means those detailed design guidelines and examples promulgated by the department of transportation and engineering for the design and installation of structures supporting wireless communications facilities in the right of way, which are effective insofar as they do not conflict with FCC rules and regulations or the design standards established in section 719-11 of this chapter.

**Sec. 719-3-D2. - Design Standards.**

“Design Standards” means those standards established in section 719-11 of this chapter, approved by the city planning commission and adopted by city council, for the design, construction, and installation of wireless communications facilities in the right of way, which are supplemented by Design Guidelines, and which are effective insofar as they do not conflict with state or federal law, including without limitation any applicable FCC rules and regulations.

**Sec. 719-3-E. - Eligible Support Structure.**

“Eligible Support Structure” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”

**Sec. 719-3-P1. - Potential Support Structure.**

“Potential Support Structure” means an existing building or structure, other than a Tower as defined in this section, that may be transformed into a base station through the mounting or installation of an antenna or transmission equipment after that city approves it as a support structure and the permittee installs transmission equipment pursuant to such approval; Potential Support Structures include but are not limited to buildings, steeples, water towers, utility poles, light poles, City-owned structures in the right of way, and outdoor advertising signs.

**Sec. 719-3-P2. - Person.**

“Person” means, without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

**Sec. 719-3-R. - Right of Way.**

“Right of Way” means real property for or devoted to (1) public transportation purposes; or (2) the placement of the city’s municipal utility easements and other

traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right of way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the city.

**Sec. 719-3-S. - Substantial Change.**

“Substantial change” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, and as applicable to facilities in the public right-of-way, which defines that term as a collocation or modification that:

- (a) increases the overall height more than 10% or 10 feet (whichever is greater);
- (b) increases the width more than 6 feet from the edge of the wireless tower or base station;
- (c) involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets;
- (d) involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets;
- (e) involves excavation or deployment of equipment outside the area in proximity to the structure and other transmission equipment already deployed on the ground;
- (f) would defeat the existing concealment elements of the support structure as determined by the Department; or
- (g) violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change.

**Note:** For clarity, the definition in this Chapter includes only the definition of a substantial change as it applies to facilities in the public right-of-way. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date that Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act.

**Sec. 719-3-T1. - Tower.**

“Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site, as more

specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(9), as may be amended or superseded.

**Sec. 719-3-T2. - Transmission Equipment.**

“Transmission Equipment” means any equipment that facilitates transmission of any FCC licensed or authorized wireless communications service, including but not limited to radio transceivers, and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply, as more specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(8). This definition includes equipment in any technological configuration associated with any FCC authorized wireless transmission, licensed or unlicensed, commercial mobile, private mobile, fixed wireless microwave backhaul, and fixed broadband.

**Sec. 719-3-W1. - Wireless Communications Facility.**

“Wireless Communications Facility” means any unstaffed installation for the transmission and/or reception of radio frequency signals for wireless communications services, typically consisting of a tower or base station, transmission equipment, equipment cabinets, and all materials or techniques used to conceal the installation.

**Sec. 719-3-W2. - Wireless Communications Service.**

“Wireless Communications Service” means any FCC-licensed or authorized wireless communication service including, without limitation, any personal wireless services, as defined in 47 U.S.C. § 332(c)(7)(D).

**Sec. 719-3-W3. - Wireless ROW Permit.**

“Wireless ROW Permit” means a wireless facility right-of-way occupancy permit as further defined in Section 719-9(c).

**Sec. 719-4. - Definitions Applicable to Type I Applications for Minor Modifications.**

For Type I applications for minor modifications, the following words and phrases shall have the meanings ascribed to them below, regardless of whether or not the words and phrases are capitalized. In the event that any defined term conflicts with any applicable federal law or regulation, the federal law or regulation shall control.

**Sec. 719-4-E1. - Eligible Support Structure Request.**

“Eligible Support Structure Request” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”

**Sec. 719-4-E2. - Existing.**

“Existing” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that “[a] constructed tower or base station is existing for purposes of [the FCC’s Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”

**Sec. 719-4-S. - Site.**

“Site” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that “[f]or towers other than towers in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”

**Sec. 719-5. - Applications.**

- (a) *Requirement.* Anyone seeking to site a Wireless Communications Facility in the right of way shall first duly file a written application with the city’s department of transportation and engineering, in accordance with the requirements in this section and the application requirements set forth in the Design Guidelines as modified from time to time by the director of the department of transportation and engineering by the authority granted in Section 719-11(c).
- (b) *Single facility per application.* A single application shall propose modification of no more than one existing Eligible Support Structure, installation on a Potential Support Structure, or construction of a new tower or base station.
- (c) *Recovery of additional costs incurred in processing application.* The department of transportation and engineering is authorized to charge the applicant for recovery of additional, reasonable costs incurred in its analysis, evaluation, and response to an application under this chapter if the actual costs of review exceed the application fee. Nothing in the reasonableness limitation on additional costs shall be construed to bar or limit the city’s authority to incur costs it deems necessary or appropriate in connection with the application. Additional costs may include unforeseen City staff review costs and the costs of third-party technical experts hired to assist with review application. No City construction or ROW wireless permits shall issue until and unless the applicant pays the application fee and such additional costs as are authorized to be recovered under this paragraph.
  - 1. *Authorization to retain independent consultants.* The director of the department of transportation and engineering may, in his or her discretion, and at any time in the review process, select and retain an independent consultant with expertise in telecommunications satisfactory to the department of

transportation and engineering in connection with any permit application. In the event that the department of transportation and engineering decides to retain an independent consultant for technical review, it shall send written notice to the applicant including a nonbinding estimate of the cost for such review. The applicant shall have five business days from the date of mailing of notice to elect to withdraw the application without any liability for any costs or expenses in connection with the independent technical review.

2. *Scope.* The department of transportation and engineering may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Technical review issues may include, but are not limited to:
  - i. permit application completeness or accuracy;
  - ii. planned compliance with applicable RF exposure standards;
  - iii. whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;
  - iv. the applicability, reliability, and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
  - v. any other issue that requires expert or specialized knowledge identified by the department of transportation and engineering.
3. *No permit until payment.* The applicant must pay for the cost of consultant technical review and for the technical consultant's testimony in any hearing as requested by the department of transportation and engineering. No permit shall issue to an applicant where that applicant has not timely paid any fee required under the Municipal Code or if the applicant owes payment on outstanding invoices for costs recoverable by the City under this Chapter 719.

**Sec. 719-7. - Categories of Applications.**

In accordance with FCC regulations, the department of transportation and engineering shall classify every application to locate a Wireless Communications Facility in the right of way as one of the following three types:

- (a) A Type I application is for a minor modification that:
  1. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
  2. does not substantially change the physical dimensions of the existing wireless tower or base station.

(b) A Type II application is for a modification that:

1. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
2. substantially changes the physical dimensions of the existing wireless tower or base station or does not qualify for approval pursuant to 47 U.S.C. § 1455(a) for any lawful reason.

(c) A Type III application is one that proposes:

1. siting new transmission equipment on a Potential Support Structure in the right of way that does not already support transmission equipment; or
2. siting a new wireless communication facility on a new tower or other support structure in the right of way.

**Sec. 719-9. - Application Review and Wireless Facility Right-of-Way Occupancy Permit.**

- (a) *General standard of review for wireless communications facilities.* All wireless communications facilities in the right of way shall conform to the provisions of this chapter and to the Design Guidelines as modified from time to time by the director of the department of transportation and engineering. The department of transportation shall review and consider each application according to the application classifications, review processes, and deployment standards described in the Design Guidelines.
- (b) *Notice to residents.* Within 10 days of filing a Type II or Type III application, the applicant shall provide the department of transportation and engineering with proof of notice to the owners of all real property located within a 200-foot radius of the site of the proposed Wireless Communications Facility as well as notice to the corresponding community council(s). The notice shall inform interested persons of the opportunity to file written comments to be submitted to the department of transportation and engineering, which comments should address whether the application conforms to the provisions of this chapter. The applicant shall provide the department with proof that the notice required under this section has been given, including a mailing list for all recipients and a copy of the mailed notice. Notwithstanding the above, the department of transportation and engineering may, at its discretion, provide additional public notice if it determines such notice is in the best interests of the public. Notice shall not be required for Type I applications.
- (c) *Written decision.* Within five working days after the department of transportation and engineering renders a decision on an application, it shall send written notice to the applicant. Any denial shall include the reasons for the denial and information regarding the process for an administrative appeal under Section 719-9.

- (d) *Approval.* Approval of an application shall include the following permissions:
1. *Permit to construct.* A permit to construct the approved wireless communications facility, subject to any conditions established by the department of transportation and engineering to carry out the purposes and intent of this chapter and the Cincinnati Municipal Code.
  2. *Wireless facility right-of-way occupancy permit.* A wireless right-of-way occupancy permit (“Wireless ROW Permit”) granting the applicant permission to occupy the right of way at the proposed site and subject to (a) the standard conditions required by Section 719-10 and (b) any additional conditions required by the director of the department of transportation and engineering to carry out the purposes and intent of this chapter and the Cincinnati Municipal Code. The Wireless ROW Permit shall not convey title, equitable or legal, in the right of way.
- (e) *Restrictions on Wireless ROW Permits.* A Wireless ROW Permit may be transferred upon notification to the city and acceptance by the transferee to allow the transferee to site wireless facilities in the same location on the same supporting structure as the transferor. Such a transfer may be made only to a provider who possesses a current Wireless ROW Permit from the city for siting wireless facilities elsewhere in the right of way.
- (f) *Denial.* The city reserves the right to deny an application if any one of the following conditions exist:
1. The applicant has not demonstrated that its application conforms to the provisions of this chapter and the Cincinnati Municipal Code, including the Design Guidelines established pursuant to this chapter;
  2. The applicant is not authorized to conduct business in the State of Ohio;
  3. For any Type I application, the applicant has failed to show that the project qualifies for approval pursuant to 47 U.S.C. § 1455(a) and the related FCC regulations at 47 C.F.R. § 1.40001 *et seq.*;
  4. For any Type II or Type III application, the applicant has failed within the prior three years to comply or is presently not in full compliance with the requirements of this chapter with regard to another Wireless Communications Facility that is not the subject of the application in question;
  5. The applicant is in default of its obligation to pay to the city fees imposed by this chapter;
  6. The design or location does not comply with the relevant standards promulgated by the American Association of State Highway and Transportation Officials (AASHTO) and utilized by the department of transportation of engineering for construction in the right of way;

7. The design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG) promulgated by the United State Access Board.

(g) *Appeal of denial on the merits.* Upon denial of an application for failure to meet the requirements of this chapter, the applicant may appeal the decision to the director of the department of transportation and engineering for reconsideration. The appeal must be in writing and delivered to the director no later than 5:00 P.M. (EST) on the tenth business day after written notification by the city of denial of the permit. An appeal must provide a detailed explanation, in writing, of the reasons the applicant contends the proposed wireless facility satisfies the requirements of Chapter 719 (including if the application qualifies for a limited exemption for personal wireless service facilities under Section 719-9(h)). The appeal should include supporting documentation. The director shall review the written appeal together with other evidence in the record and grant the permit if the director determines that, based on substantial evidence in the application record, the permit complies with the requirements of Chapter 719. The director shall issue a written decision within ten (business days of the filing of the appeal. Failure by applicant to appeal and request reconsideration under this section shall constitute a failure to exhaust administrative remedies for purposes of any subsequent appeal in a court of law.

(h) *Limited exemption for personal wireless service facilities.* Federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services. Due to wide variation among wireless facilities and technical service objectives, and due to changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. Circumstances in which an effective prohibition may occur are extremely difficult to discern, and specified findings to guide the analysis promotes clarity and the City's legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed wireless communications facility, would effectively prohibit the provision of personal wireless services, the director of the department of transportation and engineering may grant a limited, one-time exemption from strict compliance, subject to the following provisions:

1. *Required findings.* The director of the department of transportation and engineering shall not grant any exemption unless the applicant provides each of the following:
  - i. Evidence that the proposed wireless facility qualifies as a "personal wireless services facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii);
  - ii. A clearly defined and reasonable technical service objective and a clearly defined potential site search area; and

- iii. A meaningful comparative analysis that includes the factual reasons why (1) any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record are not technically feasible and (2) the proposed location and design deviation is the least noncompliant location and design necessary to reasonably achieve the applicant's technical service objective.
2. *Scope of exemption.* The director of the department of transportation and engineering shall limit the exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The department of transportation and engineering may adopt conditions of approval specific to a permit issued as a limited exemption pursuant to this section, as reasonably necessary to promote the purposes in this chapter and protect the public health, safety, and welfare.

**Sec. 719-10. - Standard Conditions of Permit Approval.**

- (a) *Standard conditions of approval.* Permission to site wireless communications facilities in the right of way shall be conditioned on compliance with the standard conditions of approval provided in this Section 719-10. The department of transportation and engineering may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.
- (b) *Wireless ROW Permit duration.* For Type II and Type III permits, the Wireless ROW Permit will automatically expire ten years from the issuance date, except when federal or state law authorizes the City to issue a permit with a shorter term. Any request for a permit renewal shall be reviewed as request for a new permit subject to all applicable procedures and standards in effect at the time the request is received.
- (c) *Standard conditions of approval for Type I permits.* Any Type I permit approved or deemed granted by the operation of law shall be automatically subject to the following conditions of approval:
  1. *Permit duration.* The city's grant or grant by operation of law of a Type I permit constitutes a federally-mandated modification to the underlying permit or approval of the subject tower and/or base station. The City's grant or grant by operation of law of a Type I permit will not extend the permit term for any underlying permit or other regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.
  2. *Accelerated permit terms due to invalidation.* In the event that any court of competent jurisdiction invalidates any portion of 47 U.S.C. § 1455(a) or any FCC rule that interprets 47 U.S.C. § 1455(a) such that federal law would not mandate approval of any Type I permit, such permit shall automatically expire one year from the effective date of the judicial order, unless the decision specifically does not authorize accelerated termination of previously approved Type I permits. A permittee shall not be required to remove its improvements

approved under the invalidated Type I permit if it submits an application for a Type II or Type III permit for those improvements before the one-year period ends. The department of transportation and engineering may extend beyond one-year the time in which a permittee may apply for a Type II or Type III permit for an invalidated Type I permit.

3. *No waiver of standing.* The City's grant or grant by operation of law of a Type I permit does not waive, and shall not be construed to waive, any standing by the City to challenge 47 U.S.C. § 1455(a), any FCC rules that interpret 47 U.S.C. § 1455(a), or any particular Type I permit.

(d) *Standard conditions of approval for all Wireless ROW permits.* All applications for Type I, II, and III permits shall be subject to the following standard conditions of approval by operation of law:

1. *Compliance with all applicable laws.* Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.
2. *Inspections; emergencies.* The City or its designee may inspect a Wireless Communications Facility in the right of way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
3. *Contact information for responsible parties.* Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the department of transportation and engineering.
4. *Indemnities.* The permittee and, if applicable, the non-government owner of a Wireless Communications Facility shall defend, indemnify, and hold harmless the City and its agents, officers, officials, and employees from:
  - i. Any and all damages, liabilities, injuries, losses, costs, and expenses arising out of any claims, demands, lawsuits, writs of mandamus, or other actions or proceedings brought against the City to challenge, attack, seek to modify, set aside, void, or annul the City's approval of the applicable Wireless ROW Permit; and
  - ii. Any and all damages, liabilities, injuries, losses, costs, and expenses and any claims, demands, lawsuits, or other actions or proceedings of any kind, whether for personal injury, death, or property damage, arising out of or in connection with the activities or performance of the

permittee or its agents, employees, licensees, contractors, subcontractors, or independent contractors.

- iii. In the event the City becomes aware of any such actions or claims, the City shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
5. *Interference with public safety radio services.* In the event that the City has reason to believe that permittee's radio communications operations are causing interference with the City's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the City to either rule out permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.
6. *Adverse impacts on adjacent properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
7. *General maintenance.* The site and the facility, including but not limited to all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
8. *Good condition required.* Wireless communications facilities shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.
9. *Graffiti abatement.* Permittee shall remove any graffiti on the wireless facility at permittee's sole expense.
10. *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
11. *Relocation for public improvement projects.* Permittee shall remove and relocate the permitted Wireless Communications Facility at permittee's sole expense to accommodate construction of a public improvement project by the City as required under Chapter 722 of the Cincinnati Municipal Code.
12. *Removal if discontinued use.* In the event that the use of a Wireless Communications Facility is discontinued, the owner shall provide written

notice to the city of its intent to discontinue use and the date when the use shall be discontinued. If a Wireless Communications Facility is not removed within ninety (90) days of discontinued use, the city may remove it at the owner's expense irrespective of the notice requirement under this section.

13. *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the use of city property as a result of an applicant's use or occupation of the right of way, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.

**Sec. 719-11. - Design Standards and Siting Preferences.**

(a) *General design principles.* Every Type II and Type III Wireless Communications Facility must conform to the following design principles:

1. The proposed wireless facility, its support structure, equipment and all associated improvements, shall be designed and sited in a manner that is sympathetic to the particular architectural character of the buildings and compatible with the streetscape in the vicinity of the proposed project site;
2. Design elements of the proposed wireless facility, its support structure, equipment and all associated improvements, shall be sensitively selected to reflect the detailing and materials associated with the buildings and streetscape in the vicinity of the proposed project site;
3. The proposed wireless facility, its support structure, equipment and all associated improvements, shall be designed and sited in a manner that does not adversely impact right-of-way circulation, accessibility, or obstruct existing or planned-future uses of the right-of-way; and
4. The proposed wireless facility shall comply with all applicable design, construction and location provisions in the Design Guidelines.

(b) *Design guidelines.* The department of transportation and engineering shall promulgate additional detailed Design Guidelines for the design and installation of wireless communications facilities in the right of way, which the department shall consider in reviewing an application. The Design Guidelines will accord with this section but will provide greater detail, description, and examples of acceptable wireless facilities including visual depictions. In addition, the Design Guidelines shall provide administrative and procedural guidance to applicants such as, for example, a list of minimum application requirements. The provisions in this section shall not limit or prohibit the department's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, the Design Guidelines.

(c) The Design Guidelines shall be reviewed and approved by the city planning commission before being finalized. The director of the department of transportation

and engineering shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. Any revisions to the Design Guidelines that would materially modify the physical design requirements for wireless facilities to make them more obtrusive or materially modify the standard and minor review locations for wireless facilities shall be presented to the city planning commission for review and recommendation at a duly-noticed hearing prior to adoption by the director. The notice shall be transmitted, at minimum, to all community councils and any person holding a Wireless ROW Permit under Chapter 719 or having an active permit application for the same. In the event of any conflict between the Design Guidelines and the standards articulated in this chapter of the Cincinnati Municipal Code, the language of this chapter takes precedence over the language of the Design Guidelines.

- (d) For revisions to the Design Guidelines required to be presented to the city planning commission under Section 719-11(c), the city shall provide notice of the proposed revisions to all community councils and any person who holds a permit under this Chapter 719, and shall provide reasonable time (not less than 14 days) for those persons to review and comment on the proposed modifications.

**Sec. 719-13. - Recovery of Costs; Use of Revenue.**

All costs recovered under this chapter shall be used to reimburse the department of transportation and engineering for its costs incurred in responding to applications and monitoring installation and maintenance of wireless communications facilities in the right of way pursuant to this chapter.

**Sec. 719-15. - Safety Requirements.**

- (a) *Prevention of failures and accidents.* Any person who owns a Wireless Communications Facility sited in the right of way shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (b) *Compliance with fire safety and FCC regulations.* Wireless communications facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (c) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the city a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this section. The bond or equivalent financial method must specifically cover the cost of removal of each Wireless Communications Facility which the owner installs in the right of way in case the city has to remove or pay for removal of the wireless facility. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

**Sec. 719-17. - Nonconforming Wireless Communications Facilities.**

- (a) Any Wireless Communications Facility sited in the right of way that is legally in existence on the date of the adoption of this chapter but that does not comply with the requirements of this chapter shall be permitted to remain in the right of way but shall be considered a nonconforming Wireless Communications Facility.
- (b) As of the effective date of the ordinance establishing this chapter, the owner of the nonconforming facility and the facility itself are subject to the standard conditions found in Section 719-10 and the maintenance requirements found in Section 719-15 of this Chapter.
- (c) If a nonconforming Wireless Communications Facility is hereafter damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this chapter of the Cincinnati Municipal Code and the Design Guidelines.
- (d) The provisions in this section shall not be applied to prohibit or deny any collocation or modification pursuant to a Type I application, as required by FCC regulations.

**Sec. 719-19. - Severability.**

The provisions of any part of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances, is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

**Sec. 719-99. - Penalties.**

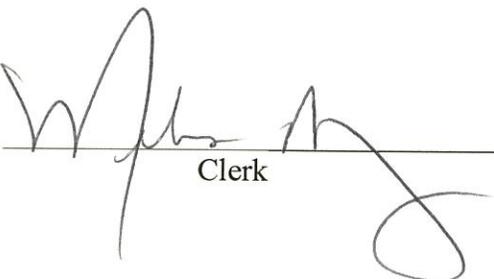
- (a) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach, or maintain any Wireless Communications Facility in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a Class D Civil Offense as defined by § 1501-9(a) of the Cincinnati Municipal Code each day during the period such violation continues.
- (b) If any Wireless Communications Facility is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the city, in addition to other remedies, may institute in the name of the city any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such facility, and/or to prevent any illegal act, conduct, business, or use in or about such facility.

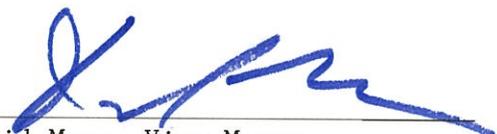
(c) The department of transportation and engineering is authorized to make requests and to issue orders regarding wireless communications facilities in the right of way for the purpose of public safety and compliance with this chapter of the Cincinnati Municipal Code. The department of transportation and engineering is also authorized to conduct visual and external inspections of wireless communications facilities and support structures in the right of way at any time and shall make efforts to coordinate with the provider responsible for a Wireless Communications Facility for any internal inspection of the relevant equipment.

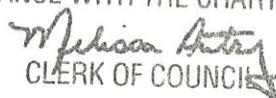
Section 2. That the City Manager and his or her designee are hereby authorized to take all actions necessary and proper to implement the regulatory standards and procedures established in this ordinance.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the need to implement the new regulations and standards so that applicants and relevant City departments can take action to address pending requests in accordance with the new design and location standards as soon as possible.

Passed: September 28, 2016

Attest:   
Clerk

  
David Mann, Vice Mayor

I HEREBY CERTIFY THAT ORDINANCE No. 308-2016  
WAS PUBLISHED IN THE CITY BULLETIN  
IN ACCORDANCE WITH THE CHARTER ON 10-11-2016  
  
CLERK OF COUNCIL