

SUBSTITUTE NO. 1 TO ORDINANCE NO. 18-039

AN ORDINANCE TO AMEND CHAPTER 42 OF THE CITY CODE RELATING TO THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS OF WAY

#4547

Sponsors:

**Council
President
Shabazz**

**Council
Member
Williams**

Co-Sponsors:

**Council
Member
Oliver**

**Council
Member
Harlee**

WHEREAS, providers of wireless telecommunications have expressed a desire to install small cell facilities in the public rights of way in order to expand the capacity of wireless networks in the city; and

WHEREAS, city council finds that enabling wireless telecommunications providers to provide high quality wireless communications service infrastructure to serve current and future needs of the city, its residents, visitors and businesses is beneficial to the city; and

WHEREAS, city council desires to balance the needs of wireless telecommunications providers with its duties to protect the public health, safety, and welfare of its residents; to avoid adverse visual and aesthetic impacts; and to manage the public rights of way, a physically limited resource; and

WHEREAS, city council finds it appropriate to clarify its policy with respect to agreements for use of city-owned or controlled structures within the public rights of way; and

WHEREAS, city council deems it necessary and appropriate to establish a fair and efficient process for the review and approval of requests to install wireless telecommunications facilities in the public rights of way that protects the health, safety, welfare and aesthetic concerns of the public, complies with all applicable laws, and permits the city to recover the costs associated with the review of such requests.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 42 of the City Code is hereby amended by amending Article XIII entitled Right-of-Way Management for Utility Service by renumbering subsections (b)-(v) of section 42-704 as subsections (c)-(w), respectively, and by deleting the stricken language and adding the underlined language to read as follows:

Sec. 42-704. – Rules of construction; definitions.

- (b) Antenna means any transmitting or receiving device mounted on or within a tower or support structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, microwave, radio frequencies or other frequency energy waves, radar signals, telecommunications signals or other communications signals. As used in this Chapter only, “antenna” shall refer solely to antennas located within the public rights of way.

- ~~(w)~~(x) Public rights-of-way means the surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water within or in which the city now or hereafter holds any property interest or otherwise controls or manages, and which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a communications facility. No reference herein, or in any license agreement, to a public right-of-way shall be deemed to be a representation or warranty by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a licensee shall be deemed to acquire only those rights of use as the city may have the undisputed right and power to give.

- (y) Support Structure means any structure which can be used for the location of antennas.

- (z) Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, television, internet and similar wireless telecommunications purposes, including self-supporting lattice towers or monopole towers. The term includes the structure and its foundation, radio and television transmission towers, microwave towers, cellular telephone towers, common-carrier towers, alternative tower structures and the like.

~~(x)~~(aa) *Transfer*. The transfer of an interest in a franchise or license means the sale or transfer, directly or indirectly, of an existing or newly created equity interest in the franchisee or licensee whether or not it may result in a transfer of control of the franchisee or licensee.

(bb) *Underground areas* are those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

~~(y)~~(cc) *Underground facilities coordination manual* is the manual, as it may be amended from time to time, in which those regulations promulgated by the commissioner necessary to carry out the purposes of this article shall be consolidated.

~~(z)~~(dd) *Utility or public utility* shall have the meaning set forth in Title 26, § 102(3) of the Delaware Code, as amended, provided that for purposes of this article utility also includes operators of cable television systems, open video systems, wireless ~~telecommunications~~ infrastructure and wireless service providers as well as every individual, partnership, association, corporation, joint stock company, agency or department of the State of Delaware or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within the State of Delaware, any natural gas, electric, water, wastewater, telecommunications service, system, plant or equipment.

~~(aa)~~(ee) *Wireless* means transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, microwave, or via radio frequencies.

(ff) *Wireless Telecommunications Facilities Manual* is the manual, as it may be amended from time to time, in which those regulations pertaining to the placement of wireless telecommunications facilities in the public rights-of-way shall be consolidated.

~~(bb)~~(gg) *Wireless telecommunications facility* ~~is the capital, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, pedestals, and electronic equipment within the right-of-way used for the purpose of transmitting, receiving, distributing, providing, or offering wireless telecommunications.~~ means wireless service infrastructure at a fixed location, whether for cell phone usage or other data transmission, consisting of the antennas, support structure, and related equipment, including but not limited to storage buildings, sheds or equipment cabinets.

~~(cc)(hh)~~ Wireless telecommunications infrastructure provider is every person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the city public right-of-way for the purpose of offering wireless telecommunication services (i.e.; transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data).

(ii) Wireless service provider is every person who provides wireless services to end users.

Sec. 42-706. – Authorization required; permit required.

(a) *Other authorizations required.*

(1) No person shall install, erect, hang, lay, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right-of-way in this city without first obtaining any required authorization from the city which may include a franchise, license, lease or any other form of authorization required under federal, state or local law.

(2) ~~A person must obtain the required authorization, for any portion of a system that occupies a portion of the public rights of way and for the provision of utility or video programming service, over a system located, in whole or in part, within the public right of way.~~ No person may occupy the public rights of way in the city to provide video programming services, utility services, or infrastructure used in the provision of utility services without a written authorization of that occupancy issued by the city, or an authorization of occupancy of the rights of way lawfully issued by the State of Delaware that permits occupancy of the portion of the public rights of way where a facility will be placed without further authorization from the city. Without limitation, a person occupies the public rights of way if it owns, controls, operates or manages facilities in the public rights of way. Provided, subject to such conditions as the city may establish, an authorization may specifically permit a wireless infrastructure provider to allow another wireless service provider to own part of the wireless telecommunications facility without obtaining a separate authorization to occupy the public rights of way.

(3) An authorization from the city under Sec. 42-706(a)(2) may take the form of a franchise, license or other written consent issued by the city. A construction permit, excavation permit, building permit, encroachment permit, road cut permit, site plan approval, permit for construction of a wireless telecommunications facility, or similar type permits are not authorizations to occupy the public rights of way. The authorization to occupy the public rights of way shall specify the compensation to be paid to the city for occupancy of

the public rights of way, which compensation shall take into account the use of the public rights of way authorized. The person seeking the authorization shall additionally reimburse the city for the costs the city incurs in connection with its review of, and action upon the person's request for the authorization.

(4) An authorization only authorizes occupancy in the manner and for purposes specified in the authorization.

(5) In addition to obtaining required authorizations, each person who will own or control wireless telecommunications facilities in the public rights of way that are used in the provision of utility services for a fee shall register with the city, and provide and maintain an accurate list of its wireless facilities, their location, and size.

(6) For purposes of this section, utility services include, but are not limited to, information services, telecommunications services, and personal and private wireless services.

(b) *Construction permits required.*

(1) Except as provided in subsection (b)(3), no person shall install, erect, hang, lay, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right-of-way in this city without first obtaining a construction permit therefor from the city.

(2) Except as provided in subsection (b)(3), no person shall enter upon, across, beneath, or over any public right-of-way in this city to relocate or otherwise displace any facility that is located upon, across, beneath, or over any public right-of-way without first obtaining a construction permits therefor from the city, except to the extent otherwise permitted by applicable law.

(3) The following work may be conducted without obtaining a construction permit:

a. Work activity that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of a wireless telecommunications facility. The Wireless Telecommunications Facilities Manual may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a construction permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety, to maintain the

character of a neighborhood or corridor, or to serve the purposes of this ordinance.

b. Work activity where facilities are relocated or where certain maintenance and/or modifications must be accomplished in coordination with a street construction or maintenance project by the city or DelDOT; however, the permit application system shall be used to notify the city of the work activity.

c. Routine operation or maintenance activities involving underground facilities but that do not include the excavation of paved street surfaces or disrupt or impede traffic in the traveled portion of a street. Examples of this work include, but are not limited to, work in underground manholes, regulators, valves, splice vaults, regulator pits, leak survey, leak investigation and classification, pumping pits or vaults.

d. Installation of “cells on wheels” or similar facilities for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities. This section does not relieve a person from the obligation to obtain other required permits (such as electrical permits) or to file appropriate traffic control plans.

e. Installation of a wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand is comparable to other facilities commonly installed on strand; does not touch or interfere with other facilities; does not cause excessive strand sag; and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles. The Wireless Telecommunications Facilities Manual may specify the volumetric limits that will fit within this exception.

(c) Any person, meeting the criteria of subsection (b)(3) above and therefore, not required to obtain a construction utility permit, must comply with all other relevant provisions of this article and the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual.

(d) Any person performing excavation on DelDOT maintained roads in the city limits is subject to state permit requirements. City of Wilmington construction permits are also required in these circumstances, however, ~~the city permit~~ fees for city permits issued solely for excavation in the public rights of way are waived.

(e) Wireless Telecommunications Facilities.

(1) Wireless telecommunications facilities requiring a permit under this Article shall meet the minimum requirements set forth in this ordinance and the Wireless Telecommunications Facilities Manual, in addition to the requirements of any other applicable law.

(2) The regulations in the Wireless Telecommunications Facilities Manual and decisions on applications for placement of wireless telecommunications facilities in the public rights of way shall, at a minimum, ensure that the requirements of this section are satisfied, absent a showing that denial of an application would effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations such that the city is required to approve the application. If an applicant establishes that the city is required to approve the application, the requirements of this ordinance and the Wireless Telecommunications Facilities Manual may be waived, but only to the minimum extent required to avoid the violation.

(3) The placement of wireless telecommunications facilities shall be subject to such other rights as the city possesses with respect to the public rights of way, and shall be installed, where approved, in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights of way and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the public rights of way; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not incommode the public, interfere with the primary uses of the public rights of way, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the public rights of way.

(4) Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive or is required to avoid an effective prohibition:

(a) Antennas located at the top of public right of way support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;

- (b) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
- (c) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, placed to avoid interfering or creating any hazard to any other use of the public rights of way, and located on one side of the utility 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 utility 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 support structure on which they are placed.
- (d) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.
- (e) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.
- (5) The city, as a matter of policy, will negotiate agreements for use of city owned or controlled light standards and traffic signals in the public rights of way. The placement of wireless telecommunications facilities on those structures shall be subject to the agreement, and the provisions of subsections (2), (4), (7), and (8) herein and the provisions of section 42-709(b) through (k) are not required to apply to such agreements by this ordinance. However, it is the intent of the City that absent specific findings that approval is required or in the public interest, the approval for use will only occur if placement is consistent with this ordinance, if the visible elements of the wireless telecommunications facility are no larger than provided in the Wireless Telecommunications Facilities Manual, and if the design is consistent with the design of the facility to which it is to be attached, minimizes the overall impact on the structure and its surroundings, and does not in any respect interfere with current and future uses of the structure by, or as directed by, the City. The agreement shall specify the compensation to the city for use of the structures. The person seeking the agreement shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon, the person's request for an agreement.

(6) No permit and no agreement for use of city owned or controlled light standards and traffic signals, shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with Federal Communication Commission (“FCC”) regulations governing radio frequency (“RF”) emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be a treated as a material violation of the terms of any permit or lease.

(7) No new support structures for wireless facilities shall be permitted in the public rights of way, and no wireless telecommunications facilities shall be permitted above-ground in areas where, under section 42-713(b), new aerial plant may not be constructed; provided that the city may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(8) No permit shall issue except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility, or wireless infrastructure providers that have contracts with wireless service providers requiring the service provider to use the proposed wireless telecommunications facility within one year of the granting of the permit.

Sec. 42-708. – Administration.

- (a) The commissioner or his or her designee shall:
- (1) Issue all construction permits and inspect the work under each;
 - (2) Determine and collect all fees owed under this article;
 - (3) Publish from time to time a schedule of application and hearing fees, which shall be designed to recover the city’s costs in processing applications for permits hereunder and may provide specially for hearing fees in those cases where hearings are required; and
 - (4) From time to time amend the provisions of the underground facilities coordination manual, which ~~shall~~ may include but not necessarily be limited to provisions concerning:
 - a. Design requirements;
 - b. Permit procedure and requirements;
 - c. Forms of permits and other documents;
 - d. Insurance and other requirements for the protection of the city;~~and~~

e. Permit-related fees;

f. Such conditions as are necessary to protect the public health, safety and welfare, and to ensure the completion, safety, workmanship and restoration of the work and/or work area so permitted;

g. Govern requirements regarding relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace, or maintain existing or future public facilities;

h. Ensure permittees have obtained and are maintaining all required consents, licenses, or franchises from the city with respect to the facilities that are the subject of the permit; and

i. Otherwise further the city's efforts to realize the objectives described in this Article.

(5) From time to time amend the provisions of the Wireless Telecommunications Facilities Manual, which may include but not necessarily be limited to provisions concerning:

a. Design requirements;

b. Permit procedures and requirements;

c. Forms of permits and other documents;

d. Insurance and other requirements for the protection of the city;

e. Permit-related fees;

f. Such conditions as are necessary to protect the public health, safety and welfare, and to ensure the completion, safety, workmanship and restoration of the work and/or work area so permitted;

g. Govern requirements regarding relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace, or maintain existing or future public facilities;

h. Ensure permittees have obtained and are maintaining all required consents, licenses, or franchises from the city with respect to the facilities that are the subject of the permit; and

i. Otherwise further the city's efforts to realize the objectives described in this Article.

(6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.

(7) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including entering into agreements to mutually extend the time for action on an application.

Sec. 42-709. – Permit procedures.

(a) An application for a permit shall be submitted in the format and manner specified by the department in Appendix B of the Underground Facilities Coordination Manual or the relevant section of the Wireless Telecommunications Facilities Manual, as applicable.

(b) For wireless telecommunications facilities, as part of the application, the applicant shall submit an initial fee and must agree to pay the costs incurred by the city in reviewing the application. Fees shall be set forth in the Wireless Telecommunications Facilities Manual. Fees set forth in the Wireless Telecommunications Facilities Manual:

(1) shall be designed to recover the costs the city expects to incur in reviewing applications for wireless telecommunications facilities, including costs associated with outside consultants; and

(2) shall be reviewed periodically and, may be increased or decreased based upon the costs the city expects to incur as a result of such review. The first review shall commence on or after the first anniversary of the effective date of this ordinance.

(c) For wireless telecommunications facilities, the applicant and the persons on whose behalf the work is being performed, or who will own or control any portion of the facilities that will be installed pursuant to the permit, shall be jointly responsible for submitting all necessary information to the city and for ensuring the accuracy of any information submitted.

~~(b)~~(c) Requests for waivers from any requirement of this section shall be made in writing to the commissioner or his or her designee. The commissioner may grant a request for waiver if the utility (or a contractor working for the utility) demonstrates to the commissioner that, notwithstanding the issuance of a waiver, the department will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

~~(e)~~(d) If the activity for which the permit is sought will include or require the cutting or any other manner of construction or obstruction on a city sidewalk, the applicant

must file a copy of the permit application form in the offices of the Department of Licenses & Inspections in the Louis L. Redding City/County Building, 3rd Floor, 800 N. French St., Wilmington, Delaware 19801. Applications for placement of a wireless telecommunications facility in the public rights of way must be filed with the Department of Public Works in the Louis L. Redding City/County Building, 6th Floor, Wilmington, DE 19801.

~~(d)~~(e) Permit application forms that are not complete or do not include required fees may be rejected. No deadline applicable to the department associated with the filing of a complete permit application form shall begin to run until such time as a complete application form has been filed by applicant. Provided that, for personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, local and federal law.

~~(e)~~(f) If the submittal of plans or other documents is required, the plans and/or documents shall be legible and of a scale that accurately and clearly presents the detail of the proposed work. Plans or documents not meeting these requirements may be rejected.

~~(f)~~(g) If the submittal of plans, requests or other documents is required, a utility may substitute electronic data transfer under the procedures set forth in the Underground Facilities Coordination Manual or the Wireless Telecommunications Facilities Manual, as applicable.

~~(g)~~(h) The commissioner or his or her designee may approve, conditionally approve, or deny an application for a permit.

~~(h)~~(i) If an application is approved, ~~the commissioner shall issue~~ a permit shall be issued to the applicant, subject to appeal as provided herein.

~~(i)~~(j) If an application is conditionally approved, the commissioner or his or her designee may condition the permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience, and ensure compliance with provisions of this Code and applicable law.

~~(j)~~(k) If an application is denied, the commissioner or his or her designee shall advise the applicant by a written, electronic, or facsimile communication of the basis for the denial.

(l) No action may be taken pursuant to an approved permit unless and until all delinquent amounts owed by the applicant to the city are fully paid.

(m) Any applicant adversely affected by an action of the commissioner's designee with respect to a wireless telecommunications facility may appeal the action to the commissioner by filing a notice of appeal with the department, and identifying the actions that are being appealed. The appeal must be received within seven (7)

business days of the date the applicant is notified of the written decision, which notification may be electronic or by mail. The commissioner may decide the appeal based on the information submitted to the department, or receive additional information and conduct such public hearings as appropriate. In determining the procedures to be followed in a particular case the commissioner shall take into account any applicable law governing the timing for a final decision. The commissioner may enter into agreements or grant requests for extensions of time (including the time for filing an appeal), provided the extensions do not prevent timely final action on an application under applicable law. No decision on appeal shall be final until a written decision issues.

Sec. 42-713. – Construction.

- (a) *Placement of facilities.* All facilities placed by an owner in public streets within the city shall be so located as to minimize interference with the proper use of public streets and other public ways and places, and to minimize interference with the rights or reasonable convenience of property owners who adjoin any of these public streets or other pre-existing utilities in the right-of-way.
- (b) *Location.* Except as permitted under section 42-706(e)(7), No holder of any construction permit for any facility shall erect new aerial plant in or on a public right-of-way in which one or more public utility providers has placed its lines underground or in an area where the city by ordinance has forbidden new aerial plant to be constructed or existing aerial plant to be maintained.
- (c) *Construction and location details.* The city reserves the right to review the detailed location and design of all utility installations, adjustments, or relocations in the street right-of-way for compliance with these procedures and issue permits for proposed utility work pursuant to the provisions of this article.
- (d) All utilities and contractors working in the City of Wilmington shall comply with all applicable requirements of 26 Del. C. ch. 8, also known as the Underground Utility Damage Prevention and Safety Act.
- (e) Each holder of any construction permit for any facility shall, upon written notice from the city, reasonably in advance, promptly relocate its lines at its own expense to accommodate realignment or construction of public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort.
- (f) *Obstructions in public streets.*
 - (1) A person who places or maintains an obstruction in, on, over, under or through a city public street shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the city.

(2) If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the commissioner may charge the person having or maintaining the obstruction for the cost of performing the work.

(g) *Restoration.*

(1) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or any public or private property, the owner or permit holder shall, in a manner acceptable to the city, replace, repair, and restore all paving, sidewalk, driveway or surface of any public street or alley disturbed, or public or private property to as good condition as existed prior to the commencement of such work.

(2) Such restoration shall be at the owner's or permit holder's cost and expense, except to the extent otherwise required by applicable law.

(3) *Warranty of work.* All paving restoration work must be guaranteed and maintained for a period of three years following notice of completion (unless such lesser time period shall be specifically stated in the permit holder's franchise, license or consent from the city authorizing occupancy of the public rights of way agreement with the city). Such warranty shall cease immediately upon disturbance of the work by others including, but not limited to, other utilities, City of Wilmington and/or State of Delaware agencies, including agents and contractors of these entities.

(4) In the event that the owner or permit holder fails to complete any work required for the repair, protection, or restoration of the public rights-of-way, or any other work required by law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done. In such a case, the owner or permit holder shall reimburse the city the cost thereof within 30 days after receipt of an itemized list of such costs, or the city may recover such costs through any bond or other security instrument provided by the owner or permit holder, except to the extent otherwise required by applicable law.

(h) *Notice.*

(1) The permit holder shall not render any road impassable without previous notification to the City of Wilmington Police Department in accordance with the requirements and time frames established in the underground facilities coordination manual and the application.

(2) The permit holder shall notify the department within five business days upon completion or upon cancellation of the permitted work.

(3) Failure to provide such notice shall be grounds for suspension of the work until such notice is provided. The utility or contractor shall sufficiently

address concerns of emergency personnel such that public safety is not compromised.

(i) *Special considerations.*

(1) *New surface considerations.* Utility excavation work that requires disturbance of city street surfaces that have been resurfaced during the past five years shall be limited to emergencies, installation of facilities to serve new customers or increased customer need, work required by regulation, work required in the interest of public safety or environmental protection or work that utilizes construction methods approved by the department of public works that will minimize the damage to the street surface.

(2) *Winter considerations.* It is desirable to minimize excavation of city streets between December 1 and March 1 due to the possibility that proper restoration material availability may be limited. Work that requires disturbance of such surfaces shall be limited to emergencies, installation of facilities to serve new customers or increased customer need, work required by regulation, work in advance of paving or work required in the interest of public safety or environmental protection. If weather conditions prevent the surface repair to be accomplished in accordance with the requirements of the underground facilities coordination manual, a temporary repair shall be made, and periodically maintained, using acceptable cold weather patching material. This temporary repair shall be completely removed when weather conditions permit and "hot mix" material as specified in the underground facilities coordination manual is available for the installation of a permanent surface repair.

(j) Utility installations in the public right-of-way area of city streets are to meet or exceed all of the requirements listed in the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual, as applicable.

(k) *Clearances between utilities.* Vertical and horizontal clearances between utilities must conform to the utility codes set forth in the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual.

(l) *Excavation warnings and barriers.* Any person causing an opening or obstruction in the public rights-of-way shall effectually guard the public against all accidents until the restoration or removal of such opening or obstruction by erecting and maintaining fences or barriers, keeping sufficient lights, lanterns and other warning devices during periods of dusk or darkness and taking any other necessary precautions.

(m) *Exceptions to requirements.*

(1) Any request for deviation from the requirements described in this article due to extreme hardship shall be submitted in writing to the

department. The request should include full justification supporting the claimed hardship condition. The department will promptly review the claim and provide a recommendation that will be forwarded to the commissioner for final action.

(2) The city recognizes and encourages innovative techniques and new technologies in the removal and restoration of street pavements and rights-of-way. To that end, the commissioner may waive or revise certain specific requirements of this policy, when such action would effectively advance a new technology and/or state of knowledge. The burden of testing or otherwise demonstrating that a new technique is likely to be effective rests with the requestor.

(n) *Other related regulations.*

(1) All utilities shall comply with the street safety, marking, and other requirements of the city’s “Underground Facilities Coordination Manual” and the “Wireless Telecommunications Facilities Manual.”

(2) Underground utilities must consider safe trenching practices when preparing their designs and constructing their facilities. Both utilities and their contractors must comply with all OSHA (Occupational Safety and Health Administration) requirements while working in rights-of-way.

(3) Contractors must insure that work or equipment placed in proximity to overhead high voltage lines complies with the State of Delaware Overhead High-Voltage Line Safety Act.

(4) Communications Act of 1934, as amended, 47 USC 151 et seq.

SECTION 2. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....June 21, 2018

Second Reading.....June 21, 2018

Third Reading.....December 6, 2018

Passed by City Council,

President of City Council

ATTEST: _____

City Clerk

Approved this ___ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance amends Chapter 42 of the City Code by establishing procedures relating to the authorization, permitting and regulation of wireless telecommunications facilities in the public rights of way.

FISCAL IMPACT STATEMENT: It is estimated that the cost associated with implementing a review and permit process for the installation of wireless telecommunications facilities in the public rights of way will be approximately \$450,000.00. It is further estimated that the city may recover approximately \$350,000.00 of its costs through the application process. However, the costs and the amount of fees collected through the application process is dependent on the number of applications received.