

**ORDINANCE NO. 2018 – 47 (AMENDED)
INTRODUCED BY: ADMINISTRATION**

**AN ORDINANCE ENACTING CHAPTER 779 OF THE
ZONING CODE OF THE CITY TITLED “SMALL CELL
FACILITIES AND WIRELESS SUPPORT STRUCTURES”,
AND DECLARING AN EMERGENCY**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
CITY OF LYNDHURST, CUYAHOGA COUNTY, STATE OF OHIO, THAT:**

SECTION 1. Chapter 779 of the Codified Ordinances of the City titled “SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES” is hereby enacted to read as follows:

**CHAPTER 779
Small Cell Facilities and Wireless Support
Structures**

779.01 PURPOSE.

The purpose of this Chapter is to preserve of the public peace, health, safety and welfare of the residents of the City of Lyndhurst regarding the installation of micro wireless facilities in the public ways of the City.

779.02 DEFINITIONS.

As used in this Chapter, certain terms are defined as follows:

- (a) "Abandoned" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (b) "Antenna" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (c) "Cable Operator," "Cable Service," and "Franchise" have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.
- (d) "Collocation" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (e) "Decorative Pole" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (f) "Design Standards" are standards published by the Safety Director of the City of Lyndhurst; and which given the design installation, repair and maintenance of facilities installed and manufactured under Chapter 4539 of the Ohio Revised Code.
- (g) "Eligible Facilities Request" has the same meaning as in 47 U.S.C. 1455(a)(2).
- (h) "Historic District" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (i) "Municipal Electric Utility" has the same meaning as in section 4928.01 of the Ohio Revised Code.
- (j) "Occupy or Use" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (k) "Operator" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (l) "Person" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (m) "Public Utility" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (n) "Public Way" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (o) "Public Way Fee" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.
- (p) "Small Cell Facility" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(q) "Utility Pole" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(r) "Video Service Provider" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(s) "Wireless Facility" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(t) "Wireless Service" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(u) "Wireless Service Provider" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(v) "Wireless Support Structure" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(w) "Wireline Backhaul Facility" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

(x) "Work Permit" has the same meaning as contained in Chapter 4939 of the Ohio Revised Code.

779.03 GENERAL REQUIREMENTS.

No person shall install, modify, repair or remove a small cell facility or wireless support structure in a public way in the City without complying with the Design Guidelines established pursuant to this Chapter.

779.04 APPLICATION FOR CONSENT.

An application provided by the City to seek the City's consent pursuant to Section 779.03 of this Chapter to install, modify, repair or remove a small cell facility or wireless support structure in a public way must be completed and submitted to the City's Building Department along with the appropriate fee as described in Section 779.05 of this Chapter.

779.05 FEE.

- (a) Application for Consent to Install and Work Permit Fee.

The fee under this Chapter shall be \$250.00 per small cell facility and must be submitted to the Building Department along with the appropriate application. A person seeking to construct, modify, replace or service more than one small cell facility within the City may file, at that person's discretion, a consolidated request for consent or, if applicable, a consolidated application for a work permit, and receive a single approval for the construction, modification, replacement or service of the small cell facilities or associated wireless support structures upon submission of the cumulative fees provided for in this Section.

- (b) City Owned Wireless Support Structure.

If the person requests to attach the small cell facility to a wireless support structure owned or operated by the City located in the public way, the City shall charge an annual fee of the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the small cell facility operator, or two hundred dollars per attachment for the attachment and any activities related to the attachment.

779.06 RECOVERY OF COSTS; USE OF REVENUE

- (a) Application processing fee. For processing an application for consent, the City may charge a fee for each small cell facility requested as prescribed under Section 4939.031 of the Revised Code and as listed on the associated application forms. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.
- (b) Annual collocation fee. For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the City and located in the public right-of-way, the City may charge an annual fee as prescribed under 4939.031 of the Revised Code and as listed on associated

application forms. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.

- (c) No other fees required. Except for any applicable work permit under division (B) of section 4939.0311 of the Revised Code and financial surety under division (J) of section 4939.0314 of the Revised Code, the City may not charge an operator any other charge or fee for a small cell facility or associated wireless support structure except as set forth in section 4939.0316 and division (B) of section 4939.0322 of the Revised Code. The fees set forth in sections 4939.0316 and 4939.0322 of the Revised Code are not public right-of-way fees.
- (d) Tax liabilities and assessments not applicable. Placement of small cell facilities in the public way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject a municipal corporation to any state or local tax liabilities or assessments.
- (e) Use of revenue. All costs recovered under this Chapter shall be used to reimburse the Building Department, City Engineer, Service Department and City Director of Law for the costs incurred in responding to applications and monitoring installation and maintenance of small cell facilities and support structures in the public right-of-way pursuant to this chapter.

779.07 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.

779.99 ENALTIES

- (a) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach, or maintain any small cell facility or support structure 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 third degree misdemeanor each day during the period such violation continues.
- (b) If any small cell facility or support structure 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 Service Department is authorized to make requests and to issue orders regarding small cell facilities in the public right-of-way for the purpose of public safety and compliance with this Chapter. The Service Department

and/or Building Department are also authorized to conduct visual and external inspections of small cell facilities and support structures in the public way at any time, and shall make efforts to coordinate with the provider responsible for a small cell facility for any internal inspection of the relevant equipment.

SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety and welfare of the residents of the City of Lyndhurst for the reason that it is necessary to coordinate the City's Codified Ordinances with the requirements of State law immediately and without delay. Therefore, this Ordinance shall take effect immediately upon the affirmative vote of not less than five members elected to Council, and signature by the Mayor, or otherwise at the earliest time allowed by law.

PASSED: August 6, 2018

MAYOR

VICE MAYOR

ATTEST: _____
Clerk of Council

I, the undersigned Clerk of Council of the City of Lyndhurst, hereby certify that there is no newspaper published or having an office of publication in said City, and that I published the foregoing Ordinance by advertising the same by title on one day in each of two consecutive weeks in a newspaper of general circulation in said City, on August 16, 2018 and August 23, 2018.

Clerk of Council

First Reading: June 4, 2018

Second Reading: July 2, 2018

Third Reading: August 6, 2018