

STATE OF GEORGIA  
COUNTY OF FULTON

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA TO AMEND CHAPTER 50 (STREETS, SIDEWALKS AND OTHER PUBLIC PLACES); TO PROVIDE FOR THE UNDERGROUND PLACEMENT OF SMALL CELL TECHNOLOGY IN PUBLIC RIGHTS OF WAY; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**

**WHEREAS**, the Mayor and Council of the City of Sandy Springs (“City”) are vested with the authority to reasonably regulate, to the extent permitted under Georgia and federal law, the installations, operations, collocations, modifications, replacements and removals of wireless telecommunications facilities in the City, recognizing the benefits of wireless communications while reasonably protecting other important City interests, including the public health, safety and welfare, aesthetics and local property values; and

**WHEREAS**, it is the intent of these regulations to establish standards for the safe provision of wireless communication services consistent with state and federal law and minimize the adverse visual impact of wireless telecommunications facilities, thereby retaining the residential and traditional character of the City and maintaining property values; and

**WHEREAS**, it is further the intent of these regulations to balance the aesthetic effect of wireless telecommunications facilities on landscapes in the City, the visual impact of wireless telecommunications facilities on surrounding property owners, citizens' demands for these services, and the needs of service providers to close significant gaps in service coverage; and

**WHEREAS**, pursuant to federal and state law, including Section 704(a) of the Federal Telecommunications Act of 1996, it is not the intent of this section to prohibit or have the effect of prohibiting the provision of personal wireless services in the City; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless telecommunications facilities on the basis of environmental effects of radio frequency (“RF”) emissions where it is demonstrated that the wireless telecommunications facility complies or will comply with the applicable FCC regulations; prohibit, effectively prohibit or unreasonably delay collocations or modifications to existing wireless telecommunications facilities that the City is required to approve pursuant to federal and state law; or require the location or siting of wireless telecommunications facilities on City-owned public property.

**BE IT ORDAINED** by the City Council of the City of Sandy Springs, Georgia that the City’s Code of Ordinances is amended as follows:

**SECTION I:** Chapter 50, relating to Streets, Sidewalks and Other Public Places, Article I is hereby amended by deleting in their entirety Sections 5 and 6 relating to definitions and placement of small cell technology in the right-of-way, and will read as follows:

**Sec. 50-5. - Reserved.**

**Sec. 50-6. - Reserved.**

**SECTION II:** Chapter 50, relating to Streets, Sidewalks and Other Public Places, is hereby amended by adding Article 5 to regulate utilities on City property, and will read as follows:

Article V. Utilities.

Division 1. - In General.

**Secs. 50-135 – 50-149. - Reserved.**

Division 2. – Small Wireless Facilities.

**Sec. 50-150 – Definitions.**

As used in this chapter, the term:

- 1) *Administrative review* means review by the city, including city staff, of an application to determine whether the issuance of a permit is in conformity with the applicable provisions of this chapter.
- 2) *Antenna* means:
  - A. Communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or
  - B. Communications equipment similar to equipment described in subparagraph (A) of this paragraph used for the transmission, reception, or transmission and reception of surface waves.

Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- 3) *Applicable codes* means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the state or the city or are otherwise applicable in the city.
- 4) *Applicant* means any person that submits an application.
- 5) *Application* means a written request submitted by an applicant to the city for a permit to:
  - A. Collocate a small wireless facility in a right of way; or
  - B. Install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be collocated.
- 6) *Attachment Agreement* means an agreement between the wireless infrastructure provider and the owner of a pole owned by an entity other than the wireless infrastructure provider authorizing the attachment of small wireless facilities to the pole.
- 7) *City pole* means a pole owned, managed, or operated by or on behalf of the city.
- 8) *City* means the City of Sandy Springs, Georgia.
- 9) *Code* means the Sandy Springs Code of Ordinances
- 10) *Collocate* or *collocation* means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.
- 11) *Communications facility* means the set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.

- 12) *Communications service provider* means a provider of communications services.
- 13) *Communications services* means cable service as defined in 47 U.S.C. Section 522(6); telecommunications service as defined in 47 U.S.C. Section 153(53); information service as defined in 47 U.S.C. Section 153(24), as each such term existed on January 1, 2019; or wireless services.
- 14) *Consolidated application* means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.
- 15) *Decorative pole* means a city pole that is specially designed and placed for aesthetic purposes.
- 16) *Eligible facilities request* means an eligible facilities request as set forth in 47 C.F.R. Section 1.40001(b)(3), as it existed on January 1, 2019.
- 17) *FCC* means the Federal Communications Commission of the United States.
- 18) *Fee* means a one-time, nonrecurring charge based on time and expense.
- 19) *Historic district* means:
  - A. Any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1;
  - B. Any area designated as a historic district under Article 2 of Chapter 10 of Title 44, the 'Georgia Historic Preservation Act'; or
  - C. Any area designated as a historic district or property by law prior to October 1, 2019.
- 20) *Law* means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.
- 21) *Micro wireless facility* means a small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.
- 22) *O.C.G.A.* means the Official Code of Georgia Annotated.
- 23) *Permit* means a written authorization, in electronic or hard copy format, required to be issued by the city to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.
- 24) *Person* means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.
- 25) *Pole* means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and a city pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.
- 26) *Rate* means a recurring charge.

- 27) *Reconditioning work* means the activities associated with substantially painting, reconditioning, improving, or repairing city poles.
- 28) *Replace, replacement, or replacing* means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.
- 29) *Replacement work* means the activities associated with replacing a city pole.
- 30) *Right of way* means, generally, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road. For the purposes of this article, public road means a highway, road, street, avenue, toll road, tollway, drive, detour, or other way that either is open to the public or has been acquired as right of way, and is intended to be used for enjoyment by the public and for the passage of vehicles in the city, including but not limited to the following public rights, structures, sidewalks, facilities, and appurtenances incidental to the construction, maintenance, and enjoyment of such rights of way:
- A. Surface, shoulders, and sides;
  - B. Bridges;
  - C. Causeways;
  - D. Viaducts;
  - E. Ferries;
  - F. Overpasses;
  - G. Underpasses;
  - H. Railroad grade crossings;
  - I. Tunnels;
  - J. Signs, signals, markings, or other traffic control devices;
  - K. Wayside parks;
  - L. Parking facilities;
  - M. Drainage ditches;
  - N. Canals and culverts;
  - O. Rest areas; and
  - P. Truck-weighting stations or check points.
- 31) *Small wireless facility* means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable

communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications:

- A. Each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and
- B. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility:
  - i. Electric meters;
  - ii. Concealment elements;
  - iii. Telecommunications demarcation boxes;
  - iv. Grounding equipment;
  - v. Power transfer switches;
  - vi. Cut-off switches; and
  - vii. Vertical cable runs for connection of power and other services.

Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

32) *State* means the State of Georgia.

33) *Support structure* means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

34) *Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.

35) *Wireless provider* means a wireless infrastructure provider or a wireless services provider.

36) *Wireless services* means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

37) *Wireless services provider* means a person that provides wireless services.

38) *Wireline backhaul facility* means an aboveground or underground wireline facility used to transport communications data from a small wireless facility network interface device to a network.

**Sec. 50-151 - Purpose and scope.**

a) The purpose of this chapter is to provide policies and procedures for the placement of small wireless facilities in certain rights-of-way within the jurisdiction of the city, which will provide a public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the city rights-of-way and the city as a whole. The chapter shall not be construed to address the permitting of small wireless facilities outside of the rights-of-way, either on private property or other publicly-owned property. The city shall regulate the placement of small wireless facilities on private property through provisions in its zoning and building codes.

b) It is the intent of this chapter to facilitate the rapid deployment of small cell facilities to provide the citizens with the benefits of advanced wireless services.

c) It is the intent of this chapter to establish uniform standards associated with the small wireless facilities including, but not limited to, the following:

1. Prevent interference with the use of streets, sidewalks, alleys, parkways, poles, and other public ways and places;
2. Prevent visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. Prevent interference with other facilities and operations of facilities lawfully located in city rights-of-way or public property;
4. Protection against environmental damage, including damage to trees or shrubbery including, but not limited to, those items planted pursuant to city landscaping, zoning, tree preservation, or other city policies;
5. Preservation of the property values of neighborhoods in which small wireless facilities are installed or proposed;
6. Preservation of the character of historic structures including but not limited to such structures or neighborhoods listed on the National Register of Historic Places and/or local historic preservation districts or historic districts;
7. Preservation of public rights-of-way and areas with underground utility facilities where small wireless facilities would be cost prohibitive and aesthetically incompatible;
8. Preservation of public rights-of-way with insufficient space to accommodate small wireless facilities; and

**Sec. 50-152 - Conflicts with other ordinances.**

To the extent this division may conflict with other ordinances of the city, this chapter shall supersede all other ordinances, except that any facilities permitted under this section shall also comply with any other provisions of this code regarding utility undergrounding requirements to the extent allowed by law.

**Sec. 50-153 - Permitted use; application process.**

a) A wireless provider may collocate small wireless facilities on city poles and decorative poles in the right of way, subject to administrative review and the issuance of a permit as set forth in this Code section. Subject to administrative review and the issuance of a permit as set forth in this Code section, provided that such uses shall be in accordance with applicable provisions of this chapter, including without limitation, those set forth in Code Section 50-155, a wireless provider may occupy the right of way for the following uses:

1. Collocation of a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in paragraph (3) of subsection (h) of Code Section 50-154 or on or adjacent to a decorative pole in compliance with Code Section 50-158; and
2. Installation, modification, or replacement of a pole or a decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in paragraphs (1) and (2) of subsection (h) of Code Section 50-154.

b) No wireless provider shall collocate any small wireless facility in the right of way or install, modify, or replace a pole or decorative pole for collocation of a small wireless facility in the right of way without first filing an application and obtaining a permit therefor. Any failure to comply with this subsection by a wireless provider shall allow the city, in its sole discretion, to restore the right of way, to the extent practicable in the reasonable judgment of the city, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider its reasonable, documented cost of doing so, plus a penalty of \$1,000.00. The city may suspend the ability of the wireless provider to receive any new permits from the city until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the city shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

c) All applicants that have not previously held a meeting that complies with this Code section shall meet with the city at least 30 days before submitting applications under this chapter to inform the city in good faith when such applicant expects to commence deployment of small wireless facilities and poles within the city pursuant to this chapter, the number of small wireless facilities and poles it expects to deploy during the 24 months after commencement, and the expected timing of such deployments.

d) Open Records Act. Any small wireless facility applications for permits filed pursuant to this section shall be in electronic form as required by the city. All records received in connection with the permit shall be handled by the city in accordance with the state Open Records Act, O.C.G.A. § 50-18-70, et seq.

1. The applicant may designate portions of its application materials that it reasonably believes contain trade secrets or other proprietary or confidential information "confidential under O.C.G.A. § 50-18-72" by submitting with it an affidavit affirmatively declaring that specific information in the records constitute trade secrets as set forth in O.C.G.A. § 50-18-72. The applicant shall be solely responsible for clearly identifying and labeling as "Confidential" or "Proprietary" any such confidential material (including, if requested by the city, submission of an affirmative affidavit regarding such confidential and/or proprietary information) which it asserts is exempt from disclosure under Section 50-18-72 of the Open Records Act or any other applicable law. However, applicants are advised that such designations on any such confidential material shall not be binding on the city or determinative of any issue relating to confidentiality.
2. In no event shall the city or any of their respective agents, representatives, consultants, directors, officers or employees be liable to applicant for the disclosure of all or a portion of any such confidential material or other information pursuant to a request under the Open Records Act.
3. If the city receives a request for public disclosure of all or any portion of any confidential material identified as "confidential" or "proprietary" by applicant, the city will endeavor to notify applicant of the request in sufficient time to allow applicant to review such request and take whatever action it shall deem appropriate to protect any such confidential material; provided, however, that the city must comply with the deadlines for responding in O.C.G.A. § 50-18-71, and that applicant shall bear the sole responsibility for the costs and expenses of all such actions

seeking to protect the confidential material. Among others, applicant may seek a protective order or other appropriate remedy. If the applicant or the city determines in good faith that the confidential material identified as "confidential" or "proprietary" is not exempt from disclosure under the Open Records Act, then, unless otherwise ordered by a court of competent jurisdiction, the city will release the requested information. In the absence of a protective or other similar order rendered by a court of competent jurisdiction, the city shall make the final determination regarding whether the requested confidential material is to be disclosed or withheld. Applicant shall be liable for any costs incurred by the city associated with an action seeking to protect confidential material. If such costs are incurred, the city shall notify applicant in writing of the amount due, and applicant shall have 30 days from the date of the notice to reimburse the city.

e) The permit application shall be made by the wireless infrastructure provider, or its duly-authorized agent as noted in a notarized statement from a person with the wireless infrastructure provider, who represents authority to make such an authorization, and shall contain the following:

1. The applicant's name, address, telephone number, and email address, including emergency contact information for the applicant;
2. The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
3. A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
4. Detailed construction drawings regarding the proposed use of the right of way;
5. To the extent the proposed facility involves collocation on a pole, decorative pole, or support structure, a structural report performed by a duly licensed engineer evidencing that the pole, decorative pole, or support structure will structurally support the collocation, or that the pole, decorative pole, or support structure may and will be modified to meet structural requirements, in accordance with applicable codes;
6. For any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;
7. Information indicating the horizontal and approximate vertical location, relative to the boundaries of the right of way, of the small wireless facility for which the application is being submitted;
8. If the application is for the installation of a pole or replacement of a decorative pole, a certification that complies with subsection (h) of this Code section;
9. If the small wireless facility will be collocated on a pole or support structure owned by a third party, other than a city pole or a decorative pole, a certification that the wireless provider has permission from the owner to collocate on the pole or support structure. The city may require the applicant to provide additional information, including an attachment agreement or other document demonstrating the applicant's legal right to place the facility on the structure. Any permit issued under this section shall be effective and conditioned upon the applicant's demonstration of compliance with this subsection.; and

10. If the applicant is not a wireless services provider, a certification that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the pole or decorative pole at the requested location.

f) The city shall not require a wireless provider to obtain a permit or any other approval or require fees or rates for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables or power lines that are strung between poles or support structures in the right of way in compliance with applicable codes; provided, however, the city may require a wireless provider to obtain permits for any additional activities such as electrical work, excavation, or closure of sidewalks or vehicular lanes within the right of way if otherwise required by generally applicable law. Such permits shall be issued on a nondiscriminatory basis upon terms and conditions applied to any other person's similar activities in the right of way. Nothing in this subsection shall be construed to allow the installation, placement, maintenance, operation, or replacement of micro wireless facilities on such cables or power lines without the agreement, authorization, or permission of the person that owns, manages, or controls such cables or power lines.

g) Any material change to information contained in an application shall be submitted in writing to the city within 30 days after the events necessitating the change.

h) Unless otherwise provided by applicable law, all applications pursuant to this chapter shall be accompanied by the fees required under Code Section 50-161.

i) A wireless provider shall not apply to install a pole or replace a decorative pole unless it has determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which:

1. The wireless provider has the right to collocate subject to reasonable terms and conditions; and
2. Such collocation would not impose technical limitations or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

j) Interference with Public Safety, Utility or Public Works Equipment. Small wireless facilities and wireless attachments shall be operated and maintained in a manner that does not interfere with public safety, utility or public works equipment.

k) Existing Utility Easements. Applicants will coordinate with the city engineer to protect existing utilities in the public ROW and public utility easements, including all public safety considerations prior to and during installation to ensure public safety response in the case of gas line, water line or electricity disturbance.

l) The provisions of this chapter concerning the collocation of small wireless facilities on poles and the installation, modification, and replacement of poles by wireless providers apply only to poles that are lawfully located or are to be lawfully located within the right of way.

m) A permit for the placement of small wireless facilities within the city rights-of-way may include a provision reasonably addressing the obligations of the parties if there is a substantial change of law at the federal, state, or local level.

**Sec. 50-154 - Action on permit application.**

- a) The requirements of this Code section govern the city's review of applications for uses that are subject to administrative review as described in subsection (a) of Code Section 50-153.
- b) Within 20 days of receipt of a written application, the city shall:
1. Notify the applicant in writing of the commencement and completion dates of any widening, repair, reconstruction, or relocation of the applicable right of way that is scheduled to commence, or is anticipated in good faith to commence, within 24 months after the application is filed;
  2. Notify the applicant, based on the city's good faith preliminary review of the information provided in the application, of any aspect of the application that appears to be grounds for the city's denial of the application pursuant to subsection (j) of this Code section; and
  3. Determine whether the application is complete and inform the applicant of its determination in writing. If the city determines that an application is incomplete, it shall specifically identify to the applicant in writing all missing information within such 20 day period; otherwise the application is deemed complete. If the city identifies missing information to the applicant as provided in this paragraph, the applicant may submit such missing information to the city within 20 days of receipt of notification in writing from the city that the application is incomplete without paying any additional application fee, and any subsequent review of the application by the city for completeness shall be limited to the previously identified missing information. If the city determines that an application remains incomplete, or if the city determines that the applicant has made material changes to the application other than to address the missing information identified by the city, the city shall notify the applicant of such determination in writing within ten days of receipt of the resubmission of the written application, and absent an agreement to the contrary between the city and the applicant that is confirmed by email or other writing, such notice shall constitute a denial of the application. If the city does not provide such written notification to the applicant within this ten-day period, the application shall be deemed complete.
- c) The city shall make its final decision to approve or deny the application within 30 days of the written determination that the application is complete or when the application is deemed complete under paragraph (3) of subsection (b) of this Code section, whichever is earlier, for a collocation, and within 70 days of the written determination that the application is complete or when the application is deemed complete under paragraph (3) of subsection (b) of this Code section, whichever is earlier, for the installation, modification, or replacement of a pole or decorative pole.
- d) A decision to deny an application pursuant to this Code section shall be in writing, shall identify all reasons for the denial, and shall identify the provisions of applicable codes or other standards applicable pursuant to this chapter on which the denial was based. The decision to deny shall be sent to the applicant contemporaneously. The review period shall run until the written decision is delivered to the applicant in accordance with subsection (s) of this Code section.
- e) If the city fails to act on an application within the review period provided for in subsections (c) and (d) of this Code section, the applicant may provide the city written notice that the time period for acting has lapsed, and the city shall then have 20 days after receipt of such notice to render its written decision. The application shall be deemed approved by passage of time and operation of law if the city does not render its written decision within such 20 days.
- f) An applicant may, at the applicant's discretion and subject to the consolidated application requirements and processes under subsections (t) and (u) of Code Section 50-154, file a consolidated application.

g) Notwithstanding any other provision of this chapter and to the extent that an application constitutes an eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure, the city shall not deny the application and shall approve the application within 60 days according to the procedures established under 47 C.F.R. 1.40001(c).

h) Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the right of way as a permitted use in accordance with the provisions of this chapter, subject to applicable codes and the following requirements:

1. Each such new, modified, or replacement pole installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level;
2. Each such new, modified, or replacement pole installed in the right of way not in historic district or in an area zoned primarily for residential use shall not exceed the greater of:
  - A. Fifty feet above ground level; or
  - B. Ten feet greater in height above ground level than the tallest existing pole in the same city right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole; and
3. New small wireless facilities in the right of way shall not exceed:
  - A. For a collocation on an existing pole or support structure, more than ten feet above the existing pole or support structure; or
  - B. For a collocation on a new, modified, or replacement pole under paragraph (1) or (2) of this subsection, the height limit provided in such paragraphs.

i) 1. A wireless provider shall be required to comply with the provisions of the city's underground ordinance that prohibits communications service providers and electric service providers from installing poles in a right of way in an area designated solely for underground or buried facilities of communications service providers and electric service providers where the city:

- A. Has required all such facilities other than light poles and attachments to be placed underground and all such undergrounding has been completed prior to the submission of the application, or, for rights of way where such facilities other than light poles and attachments have not been deployed, has in effect a reasonable and nondiscriminatory zoning or development ordinance or regulation that requires such facilities other than light poles and attachments to be placed underground;
- B. Does not prohibit the replacement of light poles or the collocation of small wireless facilities in the designated area; and
- C. Permits wireless providers to seek a waiver of the underground requirements for the placement of a new pole to support small wireless facilities where the underground requirements would effectively inhibit the provision of wireless services, which waivers shall be addressed in a nondiscriminatory manner and consistent with applicable law.

2. In areas designated solely for underground or buried facilities of communications service providers and electric service providers where small wireless facilities have been installed prior to the date of such designation by the city, the city shall:

- A. Allow a wireless provider to maintain in place any previously collocated small wireless facilities subject to any applicable pole attachment agreement; or
- B. Either allow the wireless provider to replace the pole associated with previously collocated small wireless facilities at the same location or propose an alternate location within 50 feet of the prior location, which the wireless provider shall use unless such alternate location imposes technical limits or significant additional costs.

j) The city shall approve an application for permitted uses described in subsection (a) of Code Section 50-153 unless the requested collocation of a small wireless facility or the requested installation, modification, or replacement of a pole or decorative pole:

- 1. Interferes with the operation of traffic control equipment;
- 2. Interferes with sight lines or clear zones for transportation or pedestrians;
- 3. Fails to comply with the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., or similar laws of general applicability regarding pedestrian access or movement;
- 4. Requests that ground-mounted small wireless facility equipment be located more than 7.5 feet in radial circumference from the base of the pole, decorative pole, or support structure to which the small wireless facility antenna would be attached, provided that the city shall not deny the application if a greater distance from the base of the pole, decorative pole, or support structure is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;
- 5. Fails to comply with applicable codes;
- 6. Fails to comply with the maximum limitations set forth in subsection (h) of this Code section;
- 7. With respect to an application to install a pole or decorative pole, interferes with the widening, repair, reconstruction, or relocation of a public road or highway by the city or the Department of Transportation that has been advertised for bid and scheduled for completion within six months after the application is filed;
- 8. With respect to an application to install a pole or decorative pole, interferes with a public works construction project governed by O.C.G.A. Chapter 91 of Title 36 and scheduled for completion within six months after the application is filed;
- 9. Fails to comply with Code Section 50-156, 50-157, or 50-158;
- 10. Fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements; or
- 11. Fails to comply with laws of general applicability that address the occupancy or management of the right of way and that are not otherwise inconsistent with this chapter.

k) 1. A permit from the city authorizes an applicant to undertake only certain activities in accordance with this chapter and shall not create a property right or grant authorization or license to the applicant to impinge upon the rights of other persons that may already have an interest in the right of way.

2. Collocation, installation, modification, or replacement for which a permit is issued under this chapter shall be completed within six months after issuance, provided that an extension shall be granted for up to an additional six months upon written request made to the city before the end of the initial six-

month period if a delay results from circumstances beyond the reasonable control of the applicant. Issuance of a permit authorizes the applicant to:

- A. Undertake the collocation, installation, modification, or replacement approved by the permit; and
- B. Operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of not less than ten years, which shall be renewed for equivalent durations so long as the applicant is in compliance with the criteria set forth in subsection (j) of this Code section, subject to the relocation requirements described in subsection (l) of this Code section and the applicant's right to terminate at any time.

l) If, in the reasonable exercise of police powers, the city requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of poles, support structures, or small wireless facilities is required as a result of a public project, a wireless provider shall relocate poles and support structures that such wireless provider has installed in the right of way for the collocation of small wireless facilities pursuant to this chapter at no cost to the city in the event that such poles and support structures are found by the city to unreasonably interfere with the widening, repair, reconstruction, or relocation project or the public project. If widening, repair, reconstruction, or relocation is required as a condition or result of a project by a person other than the city, such person shall bear the cost of relocating such poles or support structures. The wireless provider shall relocate the poles or support structures:

- 1. By the date designated in a written notice from the city that contains a good faith estimate by the city of the date by which the city intends to commence work, whenever the city has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any city improvement or operations in or upon the right of way so long as the same time frames are applied to all utilities in the right of way; provided, however, that the date designated for relocation shall be at least 45 days after the city provides the written notice to the wireless provider; or
- 2. Within the time frame that the wireless provider estimates in good faith is reasonably needed to complete the relocation, so long as the wireless provider provides the city written notice of its good faith estimate within 30 days following receipt of the written notice provided by the city pursuant to paragraph (1) of this subsection and explains in detail why such wireless provider cannot reasonably complete the relocation by the date designated in the city's written notice.

m) 1. The wireless provider shall reasonably cooperate with the city to carry out reconditioning work activities in a manner that minimizes interference with the wireless provider's approved use of the facility.

2. The city shall use reasonable efforts to provide the wireless provider with written notice of reconditioning work at least 120 days before such reconditioning work begins. Upon receiving such notice, it shall be the wireless provider's sole responsibility to provide adequate measures to cover, remove, or otherwise protect the wireless provider's communications facility from the consequences of the reconditioning work, including but not limited to paint and debris fallout. The city reserves the right to require the wireless provider to remove all of the wireless provider's communications facilities from the city pole and surrounding premises during reconditioning work, provided that the requirement to remove such is contained in the written notice required by this Code section. All costs associated with the protection measures, including temporary removal, shall be the sole responsibility of the wireless provider. If the city fails in good faith to give notice within at least 120 days, it shall not affect the city's rights under this subsection. In all cases, as much notice as possible shall be provided, but less than 30 days' notice shall be prohibited. The city shall provide the wireless provider with a date by which its equipment must be protected or removed.

3. The wireless provider may request a modification of the city procedures for carrying out reconditioning work in order to reduce interference with the wireless provider's operation of its communications facility. If the city agrees to the modification, the wireless provider shall be responsible for all reasonable incremental costs related to the modification.

4. The city shall provide the wireless provider with at least 120 days written notice of any replacement work before the city may remove the wireless provider's communications facilities. The city shall also promptly notify the wireless provider when the city poles have been replaced and the wireless provider can reinstall its equipment. During the replacement work, the wireless provider may maintain a temporary communications facility on the property, or after approval by the city on any land owned or controlled by the city in the vicinity of the property. If the property will not accommodate the wireless provider's temporary communications facility or if the parties cannot agree on a temporary location, the wireless provider, at its sole discretion, shall have the right to suspend the applicable permit until the replacement pole is installed, upon 30 days' written notice to the city.

n) For any collocation on city poles in the right of way, the city shall provide a good faith estimate for any make-ready work necessary to enable the city pole to support the proposed facility, including replacement of the pole if necessary, within 60 days after receipt of a completed application requesting attachment to the city pole. Alternatively, the city may require the wireless provider to perform the make-ready work and notify the wireless provider of such within the 60 day period. If the wireless provider or its contractor performs the make-ready work, the wireless provider shall indemnify the city for any negligence by the wireless provider or its contractor in the performance of such make-ready work, the work shall not be deemed to violate O.C.G.A Chapter 91 of Title 36, and the work shall otherwise comply with applicable law. If the city opts to perform the make-ready work itself, the city shall complete the work, including any pole replacement, within 90 days of receipt of written acceptance of the good faith estimate by the wireless provider. Such acceptance shall be signified by payment via check or other commercially reasonable and customary means specified by the city. The city may require that the replacement city pole have the same functionality as the pole being replaced. If the city pole is replaced, the city shall operate city fixtures on the pole, and, absent an agreement to the contrary between the city and the wireless provider that is confirmed in writing, the city shall take ownership of the new pole.

o) If the wireless provider fails to relocate a support structure or pole or fails to provide a written good faith estimate of the time needed to relocate a support structure or pole within the time period prescribed in subsection (l) of this Code section, the city shall have the right and privilege, ten days or more after the wireless provider receives written notice from the city, to cut power to or move any support structure or pole located within the right of way, as the city may determine to be necessary, appropriate, or useful in order to commence work on the public project.

p) 1. If a wireless provider decides to abandon any small wireless facility, support structure, or pole, it shall notify the city in writing as soon as practicable, but no later than 30 days prior to the abandonment. Following receipt of such notice, the city shall instruct the wireless provider in writing to remove all or any portion of the small wireless facility, support structure, or pole if the city determines that such removal will be in the best interest of public safety and welfare. If the wireless provider fails to remove the abandoned small wireless facility, support structure, or pole within 90 days after such notice, the city may do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors, or its assigns, plus a penalty of \$500.00. The city may suspend the ability of the wireless provider, its successors, or its assigns, as applicable, to receive any new permits from the city until the wireless provider, its successors, or its assigns, as applicable, have paid the amount assessed for such removal costs and the penalty assessed, if any; provided, however, that the city shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

2. A small wireless facility that is not operated or a support structure or pole that is not utilized for a continuous period of 12 months shall be considered abandoned, and the owner of such small wireless facility, support structure, or pole shall remove such within 90 days after receipt of written notice from the city notifying such owner of such small wireless facility, support structure, or pole of the abandonment. The city shall send the notice by certified or registered mail, return receipt requested, to such owner at the last known address of such owner of the small wireless facility, support structure, or pole. If the owner does not provide written notice that the small wireless facility has not been out of operation or the support structure or pole has in fact been utilized for a continuous period of 12 months or does not remove such small wireless facility, support structure, or pole within the 90 day period, the city may remove or cause the removal of such small wireless facility, support structure, or pole pursuant to the terms of its support structure or pole attachment agreement for city poles or through actions provided for abatement of nuisances or by other law for removal and cost recovery.

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

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

s) The city shall send any notice or decision required by this Code section by registered or certified mail, statutory overnight delivery, hand delivery, or email transmission. The decision or notice shall be deemed delivered upon email transmission, deposit into overnight mail or regular mail receptacle with adequate postage paid, or actual receipt if delivered by hand.

t) An applicant seeking to construct, modify or replace a network of small wireless facilities may, at the applicant's discretion, file a consolidated application for up to five small wireless facilities and receive a single permit for such multiple small wireless facilities; provided, however, the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same consolidated application. While an applicant has applications, including consolidated applications, pending before the city for review of 15 or more new poles and the collocation of associated small wireless facilities, the city may toll the processing requirements under this Section 50-154 for any application subsequently submitted by the same applicant for the placement of new poles and the collocation of associated small wireless facilities; and

u) An applicant seeking to collocate a small wireless facilities may, at the applicant's discretion, file a consolidated application for up to fifteen small wireless facilities and receive a single permit for such multiple small wireless facilities; provided, however, the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same

consolidated application. While an applicant has applications, including consolidated applications, pending before the city for review of 45 or more sites for the collocation of small wireless facilities on existing poles or support structures, the city may toll the processing requirements under this Section 50-154 for any application subsequently submitted by the same applicant for the collocation of small wireless facilities on existing poles or support structures.

v) When the processing of an application is tolled pursuant to subsection (t) or (u) of this Section 50-154, the application is no longer counted as pending. As processing of applications is completed, the city shall begin processing previously tolled applications in the order in which they were submitted, unless the applicant specifies a different order.

w) Appeal. Any appeal of a decision rendered pursuant to this Article section shall be made by Writ of Certiorari to the Superior Court of Fulton County, Georgia.

**Sec. 50-155. Standard of Care**

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

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

**Sec. 50-156. Historic Districts**

Notwithstanding any provision of this chapter to the contrary, within a historic district, an applicant may collocate a small wireless facility and may place or replace a pole, only upon satisfaction of the following:

1. The issuance of a permit under subsection (a) of Code Section 50-153; and
2. (A) Compliance with any objective, reasonable, and nondiscriminatory aesthetic and structural requirements that have been made publicly available in writing by the city at least 30 days prior to submission of the application; provided, however, that any such requirements may not have the effect of materially inhibiting any wireless provider's technology or service, and compliance with any such requirements shall not be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility; or

(B) In the absence of any such requirements, a replacement pole shall be substantially similar in height and appearance to the pole being replaced.

**Sec. 50-157. Areas Zoned for Residential Use.**

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

**Sec. 50-158. Decorative Poles.**

Notwithstanding any provision of this chapter to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following:

1. The issuance of a permit under subsection (a) of Code Section 50-151; and
2. (A) Compliance with any objective and reasonable aesthetic and structural requirements that have been made publicly available in writing by the city at least 30 days prior to submission of the application; provided, however, that any such requirements shall not have the effect of materially inhibiting any wireless provider's technology or service, and compliance with any such requirements shall not be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility; or  
  
(B) In the absence of any such requirements, a replacement decorative pole shall be substantially similar in height and appearance to the decorative pole being replaced.

The city shall operate city fixtures on the replaced decorative pole, and, absent an agreement to the contrary between the city and the wireless provider that is confirmed by email or other writing, the city shall take ownership of the new decorative pole.

**Sec. 50-159 - Construction and maintenance requirements.**

a) **Public Safety and Traffic.** Construction and maintenance of small wireless facilities shall be performed in a manner that does not endanger public safety and that minimizes interference with traffic flow. Where permittee must disrupt traffic flow, appropriate safety and traffic flow measures shall be employed to safeguard against accidents and keep traffic moving in an efficient manner subject to all applicable standards and regulations promulgated and/or adopted by the city and the Georgia Department of Transportation.

b) **Construction and Maintenance Exclusions.** The city retains the authority to exclude certain days, holidays and special events periods during which the wireless infrastructure provider may not perform construction or maintenance activities on its small wireless facilities and must be out of the rights-of-way. The public works department may also require that the wireless infrastructure provider and their agents not perform construction or maintenance work during certain times of the day in order to lessen the impact on traffic or otherwise address safety concerns. Such times shall be as approved by the city council or the public works director. Prior to commencing construction or maintenance, the wireless infrastructure provider or its agent must verify that its planned work does not fall into an excluded time period.

c) **Compliance with ADA.** Any small wireless facilities or associated construction and maintenance activities must comply with Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794) and the Americans with Disabilities Act, (42 U.S.C. Section 12101, et seq.). The city shall not be liable for any small wireless facilities or any actions of the wireless infrastructure provider which violate the ADA. If at any time the city determines the right-of-way is not in compliance due to the actions or facilities of the wireless infrastructure provider, the city may, in its sole discretion, request the wireless infrastructure provider to make the appropriate repairs within five days of sending of the notice from the city. If the repairs are not made by the wireless infrastructure provider, the city may perform the repairs on its own and require reimbursement of any expenses associated therewith. When such repairs are made by the city, written notice shall be sent requesting reimbursement upon completion of the repairs, and the wireless infrastructure provider shall have 30 days to reimburse such expenses from the sending of the notice.

- d) Small wireless facility installations on all poles shall utilize a concealed design, with all cabling being inside a hollow pole or otherwise hidden from view without banding or external conduit or panduit.
- e) All radios, network equipment and batteries will be enclosed inside the pole or on the pole inside a concealment device approved by the city public works department.
- f) Any new poles installed shall not leach any volatile organic compounds or toxic materials.
- g) Any new poles installed should be constructed in a manner to avoid unsightly rust and corrosion. The finish on the pole should conform to city standards, including selection of color, finish method, such as "baked on" or color that is tightly integrated into the material composition of the pole to prevent color fading or erosion or peeling of paint from the exterior of the pole.
- h) Any small wireless facility placed on a city pole shall not interfere with or block any banners or other attachments owned by the city. The small wireless facility shall be aesthetically compatible with the surrounding area through application of camouflage and concealment design techniques.

**Sec. 50-160 - Removal, relocation or modification of a small wireless facility in the ROW.**

- a) Removal. The applicant, or the person that owns or operates the small wireless facility collocated in the right of way, may remove its small wireless facilities at any time from the right of way upon not less than 30 days' prior written notice to the city and may cease paying to the city any applicable fees and rates for such use, as of the date of the actual removal of the small wireless facilities. In the event of such removal, the right of way shall be, to the extent practicable in the reasonable judgment of the city, restored to its condition prior to the removal. If the applicant fails to return the right of way, to the extent practicable in the reasonable judgment of the city, to its condition prior to the removal within 90 days of the removal, the city may, at the sole discretion of the city, restore the right of way to such condition and charge the applicant the city reasonable, documented cost of removal and restoration, plus a penalty of \$500.00. The city may suspend the ability of the applicant to receive any new permits from the city until the applicant has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the city shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.
- b) Emergency Removal or Relocation of Facilities. The city retains the right to cut or move or disconnect any small wireless facility located within its rights-of-way as the city, in its sole discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the city shall notify the wireless infrastructure provider and provide it an opportunity to move its own small wireless facility, prior to the city cutting or removing such facility and the city shall notify the wireless infrastructure provider after cutting or removing the small wireless facility. The city shall not be liable for any damages to small wireless facilities or other infrastructure that is cut or removed during such emergencies. When such removal is performed by the city, written notice shall be sent requesting reimbursement after completion of the removal, and the wireless infrastructure provider shall have 30 days to reimburse such expenses after the sending of the notice.

**Sec. 50-161 - Fees and rates.**

As a condition to the issuance of a permit to collocate a small wireless facility or to install, modify, or replace a pole or a decorative pole for collocation of a small wireless facility in city right of way, the applicant shall pay the following fees and rates:

1. A fee for each application for the collocation of each small wireless facility on an existing pole assessed by the city of \$100.00 per small wireless facility;

2. A fee for each application for each replacement pole with an associated small wireless facility assessed by the city of \$250.00;
3. A fee for each application for each new pole with an associated small wireless facility assessed by the city of \$1,000.00 per pole with an associated small wireless facility;
4. An annual right of way occupancy rate assessed by the city for nonexclusive occupancy of the right of way by the applicant in the following amounts:
  - A. One hundred dollars per year for each small wireless facility collocated on any existing or replacement pole, including an existing or replacement city pole; or
  - B. Two hundred dollars per year for each new pole, other than a replacement pole, with an associated small wireless facility;
5. An annual attachment rate for collocations on city poles of \$40.00 per year per small wireless facility, which shall be nondiscriminatory regardless of the services provided by the collocating wireless provider;
6. A fee for make-ready work, as provided in subsection (n) of Code Section 50-154; and
7. Generally applicable nondiscriminatory fees for any permit required under generally applicable law; provided, however, that an applicant shall not be required to obtain or pay any fees for a building permit, as the permit issued pursuant to this chapter serves as a building permit for the applicable poles and small wireless facilities.

**Secs. 50-162 – 50-179. Reserved.**

**SECTION III:** It is the intention of the City Council and it is hereby ordained by the authority of the City Council that the provisions of this Ordinance shall become and be made a part of The Code of the City of Sandy Springs, Georgia, and the codifier is authorized to make the specified deletions, insertions, additions, and to insert headings, article numbers and section numbers as and where appropriate.

**SECTION IV:** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION V:** If any section, subsection, provisions, or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or, if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent of the City Council that this Ordinance would have been adopted in its current form without the invalid or unconstitutional provision contained therein.

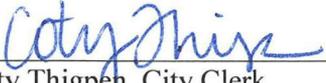
**SECTION VI:** This Ordinance shall become effective immediately upon its adoption.

**APPROVED AND ADOPTED** this the 5<sup>th</sup> day of March, 2019.

Approved:

  
Russell K. Paul, Mayor

Attest:

  
Coty Thigpen, City Clerk

(Seal)

