

**THE CITY OF SOUTH EUCLID
SCHEDULE OF MEETING**

**Tuesday May 29, 2018
8:00 PM**

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**
3. **SWEARING-IN CEREMONY:** Firefighter Justin Capadona
4. **REPORT OF MAYOR**
5. **REPORT OF LAW DIRECTOR & DEPARTMENTAL HEADS**
6. **REPORT OF SCHOOL DISTRICT (1st Meeting of Month Only)**
7. **PUBLIC HEARINGS (OPEN MEETING) RELATED TO AGENDA ITEMS**
8. **REPORT OF COMMITTEES**
9. **LEGISLATION FOR DOCKET REMOVAL**

Committee of the Whole

1. ORDINANCE 03-11 AN ORDINANCE **AMENDING SECTION 1330.04 "TAX EXEMPTION" OF CHAPTER 1330 "COMMUNITY REINVESTMENT AREA"** OF PART THIRTEEN "BUILDING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. **FOR REMOVAL.**
2. RESOLUTION 23-14 A RESOLUTION FORMALLY AUTHORIZING THE FINANCE COMMITTEE OF CITY COUNCIL TO ESTABLISH A FORMAL AUDIT COMMITTEE. **FOR REMOVAL.**

Safety Committee

1. ORDINANCE 11-15 CREATING NEW SECTION 1550.24 "FIRE AND SMOKE DAMPER INSPECTIONS" OF CHAPTER 1550 "MISCELLANEOUS REGULATIONS" OF TITLE FIFTEEN "FIRE PREVENTION CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. **FOR REMOVAL.**
2. ORDINANCE 26-15 AN ORDINANCE AMENDING SECTION 531.09 "ABATEMENT OF CRIMINAL ACTIVITY NUISANCES" OF CHAPTER 531 "NUISANCES" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. **FOR REMOVAL.**
3. ORDINANCE 26-16 REPEALING AND REPLACING ORDINANCE 503.01 "ON PUBLIC PROPERTY" OF CHAPTER 503 "ADVERTISING" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID AND DECLARING AN EMERGENCY. **FOR REMOVAL.**

10. LEGISLATION REQUESTED BY CITY COUNCIL

1. ORDINANCE 11-18 AMENDING SECTION 732.02 "CONDITIONAL USES" OF CHAPTER 732 "CONDITIONAL USES IN COMMERCIAL DISTRICTS" OF TITLE THREE "COMMERCIAL DISTRICT REGULATIONS" OF PART SEVEN "PLANNING AND ZONING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. **TO BE PLACED ON FIRST READING AND REFERRED TO THE PLANNING COMMISSION.**

11. LEGISLATION REQUESTED BY THE MAYOR & ADMINISTRATION

1. RESOLUTION 27-18 AUTHORIZING THE MAYOR TO CONVEY CERTAIN REAL PROPERTY OF THE CITY OF SOUTH EUCLID, OHIO TO ONE SOUTH EUCLID. FIRST READING.
2. RESOLUTION 28-18 ADOPTING THE FISCAL BUDGET FOR THE YEAR BEGINNING JANUARY 1, 2019. FIRST READING.
3. RESOLUTION 29-18 AUTHORIZING THE APPROPRIATION OF UNAPPROPRIATED FUNDS IN THE FOLLOWING FUND: "WATER DISTRIBUTION INFRASTRUCTURE #424" FOR EXPENDITURES OF THE 2018 SOUTH EUCLID WATERMAIN RENEWAL PROGRAM. FIRST READING.
4. RESOLUTION 30-18 AUTHORIZING THE TRANSFER OF UNAPPROPRIATED FUNDS IN THE GENERAL FUND TO THE LAND ACQUISITION FUND. FIRST READING.
5. RESOLUTION 31-18 AUTHORIZING THE APPROPRIATION OF UNAPPROPRIATED FUNDS IN THE FOLLOWING FUND: "LAND ACQUISITION FUND-TIF PAYMENT #440-8850-52681" IN ORDER TO MAKE A TIF PAYMENT TO THE CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS SCHOOL DISTRICT. FIRST READING.
6. ORDINANCE 12-18 CREATING CHAPTER 1335 "SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY" OF TITLE FIVE "OTHER BUILDING PROVISIONS" OF PART THIRTEEN "BUILDING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID; AND DECLARING AN EMERGENCY.

12. COMMUNICATIONS OF CITY COUNCIL

13. PUBLIC HEARINGS (OPEN MEETING) RELATED TO OPEN BUSINESS

- 14. ADJOURN TO EXECUTIVE SESSION** FOR THE PURPOSES OF DISCUSSING CURRENT LITIGATION.

15. ADJOURN TO REGULAR MEETING OF COUNCIL

16. ADJOURN

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 03-11
INTRODUCED BY: Miller
REQUESTED BY: Mayor

February 14, 2011
FOR REMOVAL

AN ORDINANCE

AN ORDINANCE AMENDING SECTION 1330.04 "TAX EXEMPTION" OF CHAPTER 1330 "COMMUNITY REINVESTMENT AREA" OF PART THIRTEEN "BUILDING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, the Council of the City of South Euclid, Ohio (hereinafter "Council") has enacted Ordinance No. 02-08, codified as Chapter 1330 of the Codified Ordinances, implementing Sections 3735.65 through 3735.70 of the Ohio Revised Code; and

WHEREAS, the Council wishes to clarify the maximum allowable exemption period for new construction of industrial and commercial properties within the City;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 1330.04 "Tax Exemption" of Chapter 1330 "Community Reinvestment Area" of Part Thirteen "Building Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby amended to read as follows:

Section 1330.04 Tax Exemption.

(a) Within the Community Reinvestment Area, the percentage of the tax exemption on the increase in the assessed valuation resulting from improvements to commercial and industrial real property and the term of those exemptions shall be negotiated on a case-by-case basis in advance of construction or remodeling occurring according to the rules outlined in the Ohio R.C. Section 3765.67. The results of the negotiation as approved by this Council will be set in writing in a Community Reinvestment Area Agreement as outlined in Ohio R.C. Section 3735.671.

(b) For residential property, a tax exemption on the increase in the assessed valuation resulting from the improvements as described in Ohio R.C. Section 3735.67 shall be granted upon application by the property owner and certification thereof by the designated Housing Officer for the following periods.

1. Five (5) years, for the remodeling of every residential dwelling unit containing not more than two housing units and upon which the cost of remodeling is at least \$2,500, as described in Ohio R.C. Section 3735.67, and with such exemption being Fifty percent (50%) for each of the Five (5) years.
2. Five (5) years, for the remodeling of every residential dwelling unit containing more than two housing units and upon which the cost of remodeling is at least \$5,000, as described in Ohio R.C. Section 3735.67, and with such exemption being Fifty percent (50%) for each of the Five (5) years.
3. Five (5) years, for the construction of new dwellings as described in Ohio R.C. Section 3735.67, with such exemption being Fifty percent (50%) for each of the Five (5) years.
4. Up to, and including, ~~Five (5)~~ **Twelve (12)** years, and up to, and including, Fifty percent (50%) for the remodeling of existing commercial and industrial facilities and upon which the cost of remodeling is at least \$5,000, as described in Ohio R.C. Section 3735.67, the term and percentage of which shall be negotiated on a case-by-case basis in advance of remodeling occurring.

5. Up to, and including, ~~Five (5)~~ **Fifteen (15)** years, and up to, and including, ~~Fifty percent (50%)~~ **Seventy-Five percent (75%)** for the construction of new commercial or industrial facilities, the term and percentage of which shall be negotiated on a case-by-case basis in advance of construction occurring.

6. For the purposes of the above described Community Reinvestment Area, structures exclusively used for residential purposes and composed of four (4) and fewer units shall be classified as residential structures.

7. Up to, and including, Five (5) years, and up to, and including, Seventy-Five percent (75%) for new construction on existing or previously developed residential, commercial, or industrial properties.

(c) If remodeling qualifies for an exemption, during the period of the exemption, the exempted percentage of the dollar amount of the increase in market value of the structure shall be exempt from real property taxation. If new construction qualifies for an exemption, during the period of the exemption the exempted percentage of the structure shall not be considered to be an improvement on the land on which it is located for the purpose of real property taxation.

Section 2: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon confirmation by the Director of Development of the findings in this Ordinance.

Section 4: The Mayor of the City of South Euclid is hereby directed and authorized to submit this amendment to the Director of Development to confirm the findings contained within this Ordinance.

Passed this _____ day of _____, 2011

David B. Miller, Council President

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 23-14
INTRODUCED BY: Miller
REQUESTED BY: Gray

May 12, 2014
FOR REMOVAL

RESOLUTION

A RESOLUTION FORMALLY AUTHORIZING THE FINANCE COMMITTEE OF CITY COUNCIL TO ESTABLISH A FORMAL AUDIT COMMITTEE.

WHEREAS, the National Commission on Fraudulent Financial Reporting (known as the Treadway Commission) has stated that audit committees can serve as "informed, vigilant and effective overseers of the financial reporting process and internal process and internal controls"; and

WHEREAS, the City Council Committee of the Whole currently informally acts and performs the duties of an audit committee; and

WHEREAS, auditor James Zupka, CPA, Inc. has recommended that this Council establish a formal Audit Committee.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of South Euclid, Ohio:

Section 1: That the Council of the City of South Euclid authorizes the Finance Committee of City Council to be establish a formal Audit Committee.

Section 2: That said Audit Committee shall consist of the three members of the Finance Committee, with the Chair of the Finance Committee also serving as the Chair of the Audit Committee, however, the Chair shall not have any voting power. In addition, there shall be three additional members of the Audit Committee who are residents of the City of South Euclid and at least two of those members shall be professionals knowledgeable in the City's operations and in accounting, such as attorneys or bankers.

Section 3: That the Audit Committee shall meet on a quarterly basis and shall review the annual unaudited financial report submitted to the Auditor of State, review the process used to prepare interim financial information submitted to the Council, review audit results, assure that audit recommendations are appropriately addressed, and serve as liaison to management and independent auditors.

Section 4: That is hereby found and determined that all formal actions of this council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5: This Resolution shall take effect and be in force from and after the earliest period permitted by law and upon signature of the Mayor.

Passed this _____ day of _____, 2014

David Miller, Council President

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 11-15
INTRODUCED BY: Miller
REQUESTED BY: Gelfand & Fiorelli

May 26, 2015
As Amended by the Safety Committee: July 13, 2015
Second Reading: July 27, 2015
FOR REMOVAL

AN ORDINANCE

CREATING NEW SECTION 1550.24 "FIRE AND SMOKE DAMPER INSPECTIONS" OF CHAPTER 1550 "MISCELLANEOUS REGULATIONS" OF TITLE FIFTEEN "FIRE PREVENTION CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. ~~AND DECLARING AN EMERGENCY.~~

WHEREAS, The City of South Euclid would like to provide inspections for Heating Ventilation Air Conditioning (hereinafter "HVAC") fire and smoke dampers located within all City owned and/or leased buildings, and

WHEREAS, providing said inspections will ensure that the City of South Euclid is in compliance with the most up-to-date National Fire Protection Associations (hereinafter "NFPA") [~~standards~~] regulations, and

NOW THEREFORE BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That new Section 1550.24 "Fire and Smoke Damper Inspections" of Chapter 1550 "Miscellaneous Regulations" of Title Fifteen "Fire Prevention Code" of the Codified Ordinances of the City of South Euclid be hereby created to read as follows:

"Section 1550.24 FIRE AND SMOKE DAMPER INSPECTIONS IN CITY OWNED OR LEASED BUILDINGS

- (a) Adoption by Reference. Pursuant to Ohio R.C. 731.233, there is hereby adopted by the Municipality, for the purposes of prescribing regulations governing hazardous to life and prosperity from fire, some and explosion, the requirement for fire and smoke damper inspections conducted in accordance with NFPA [~~standards~~] **[guidelines]** ~~sections 105.6.5.2 through 105.6.5.12 as well as sections 105.6.3 and 105.6.6 as adopted, published and recommended by NFPA, save and except such portions as may hereinafter be deleted or amended.~~ Said NFPA [~~standards~~] **[guidelines]** standards are incorporated in this chapter by reference as if fully set forth as length herein as it relates to Fire and Smoke Damper Inspections, and such Code shall be known as the Fire Prevention Code of the Municipality.
- (b) Regularity and Monitoring Inspections. All fire and smoke damper units in buildings that are city owned or leased shall be inspected every four (4) years. Compliance with this inspection requirement shall be monitored by the Building Department and Bureau of Fire Prevention.
- (c) Regulations Governing Inspections and Requirements for Inspectors. The inspections shall be conducted in accordance with NFPA [~~standards~~] **[guidelines]** ~~NFPA standards Sections 106.6.5.2 through 105.6.5.12 and Sections 105.6.3 and 105.6.6.~~ The inspections shall be conducted by technicians and contractors who have been certified by the International Certification Board (hereinafter referred to as "ICB") and American National Standards Institute (hereinafter referred to as "ANSI") to ensure the quality of the inspection process.
- (d) Record of Inspections and Repairs. The results of the inspections are to be given to the Building Department within thirty (30) days of the completion of the inspection. The Building Department will keep those inspection reports until the next inspection is completed four (4) years later. If the fire and smoke damper systems are found to be faulty, repairs must be completed and approved by an ICB and ANSI certified technician and contractor within sixty (60) days from the date the system was found to be faulty.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

~~Section 3:~~ That ~~this Ordinance is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety and for the further reason that the same effects the day-to-day business of various departments of the municipality.~~ Wherefore, this Ordinance shall take effect upon passage and approval

Passed this _____ day of _____, 2015.

David B. Miller [**Jane Goodman**], President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 26-15
INTRODUCED BY: Miller
REQUESTED BY: Mayor

November 9, 2015
As Amended in Safety Committee: January 25, 2016
Second Reading: February 8, 2016
FOR REMOVAL

AN ORDINANCE

AN ORDINANCE AMENDING SECTION 531.09 "ABATEMENT OF CRIMINAL ACTIVITY NUISANCES" OF CHAPTER 531 "NUISANCES" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, the Council of the City of South Euclid recognizes the need to periodically review and amend the codified ordinances in order to best serve the residents of the community; and

WHEREAS, Council recognizes that frequent nuisances which are committed by owners, occupants and invitees on South Euclid properties are not limited to the immediate surroundings of said properties; and

WHEREAS, it is not the intention of Council to punish victims of crime by eviction or threats of eviction through the institution of its nuisance ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 531.09 "Abatement of Criminal Activity Nuisances" of Chapter 531 "Nuisances" of Part Five "General Offenses Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby amended to read as follows:

531.09 ABATEMENT OF CRIMINAL ACTIVITY NUISANCES.

(a) ~~The following activities occurring on properties in the City of South Euclid and or engaged in by an owner, occupant, or invitee of the owner or occupant of such properties or involving an offender residing at a property within the City of South Euclid are hereby declared to be a public nuisance. either residential or commercial properties, or within 1,000 feet of the property line of said residential or commercial property, and engaged in by an owner, occupant or invitee of the owner or occupant of such residential or commercial properties, are hereby declared to be public nuisances.~~

- (1) Any animal violations under Sections 505.01, Dogs and Other Animals Running at Large; Dangerous and Vicious Dogs; 505.09, Barking or Howling Dogs; 505.06, Poisoning Animals; 505.07, Cruelty to Animals; 505.071, Neglect of Animals; 505.08, Noxious Odors; Unsanitary Conditions;
- (2) Any disorderly conduct, disturbance of the peace or other violation of Chapter 509 of the Codified Ordinances;
- (3) Any drug abuse violation under Chapter 513 of the Codified Ordinances;
- (4) Any gambling violation under Chapter 517 of the Codified Ordinances;
- (5) Any health, safety or sanitation violation under Chapter 521 of the Codified Ordinances;
- (6) Any obstruction of official business violation under Section 525.07 of the Codified Ordinances;
- (7) Any alcohol violations under Chapter 529 of the Codified Ordinances;
- (8) Any sex offenses under Sections 533.07, Public Indecency; 533.08, Procuring; 533.09, Soliciting; or 533.10, Prostitution, of the Codified Ordinances;
- (9) Any offense against another person under Chapter 537 of the Codified Ordinances;
- (10) Any offense against property under Sections 541.03, Criminal Damaging or Endangering; 541.04, Criminal Mischief, of the Codified Ordinances;
- (11) Any littering or deposition of waste under Chapter 527 of the Codified Ordinances;
- (12) Any theft violation under Sections 545.05, Petty Theft; 545.08, Unauthorized Use of Property, of the Codified Ordinances;
- (13) Any weapons, explosives, firearm or handgun violation under Chapter 549 of the Codified Ordinances;
- (14) Any fireworks violation under Chapter 1540 of the Codified Ordinances;

(15) Any waste container violation under Section 1411.081 of the Codified Ordinances; and

(16) Any offense that is a felony under the Ohio Revised Code.

(b) The Chief of Police or his designee, upon finding that two or more nuisance activities declared in this section have occurred within any 12-month period, may cause a written notice and order to be served on the owner of the property declaring that such property is a nuisance property. The notice and order shall set forth the nature of the nuisances, the estimated costs to abate any future nuisances, and state that the owner may avoid being charged the costs of abatement by taking steps to prevent any further nuisance activity as set forth in this section. The notice shall further state that if a third or subsequent nuisance activity as declared in this section occurs within 12 months of the written notice, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property. Notice shall be served as set forth in Sections 531.02 and 531.03 of the Codified Ordinances.

(c) **Except as otherwise prescribed in subsection (c)(1) of this section,** if within 12 months after the written notice referred to in division (b) of this section has occurred, a third nuisance activity as declared in this section occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property in the same manner as in Section 531.04 of the Codified Ordinances, and the costs shall be calculated as set forth in division (e) of this section. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least 30 days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be served as set forth in Section 531.03 of the Codified Ordinances.

(1) Any violation under subsection (a)(9) of this section shall be referred to the South Euclid police department for the filing of a criminal complaint to the municipal court of jurisdiction and its domestic violence advocate upon any first nuisance activity as described in this section. Any enforcement activity, if pursued under this section for subsequent nuisance activity, shall be conducted with appropriate mitigation activity in close consultation with the court and its domestic violence advocate.

(d) The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to this section may appeal such notice by submitting a written request for reconsideration to the Chief of Police within 30 days of the date of the notice. If the Chief of Police finds that the facts presented do not support the declaration of a nuisance, the Chief shall rescind the notice. Otherwise, the Chief shall deny the request and refer the appeal for hearing by the Board of Zoning Appeals. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show by a preponderance of the evidence that each violation stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. The City shall be deemed to have failed to have met this standard if the owner demonstrates by a preponderance of evidence that:

(1) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or

(2) He or she had knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9); or

(3) He or she had knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity; and upon receipt of the notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9).

(e) Costs of abatement shall be assessed based upon an escalating defined cost. The escalating defined costs are: two hundred and fifty dollars (\$250.00) upon the first declaration of nuisance under this chapter; five hundred dollars (\$500.00) on the second nuisance declaration; seven hundred fifty dollars (\$750.00) on the third nuisance declaration; and one thousand dollars (\$1,000.00) on each subsequent nuisance declaration.

(f) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property, do not affect or limit the City's right or authority to bring criminal prosecution or other legal action against any person for violation of the City's ordinances.

Section 2: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2015 2016.

Jane Goodman, President of Council

Attest:

Approve:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 26-16
INTRODUCED BY: Goodman
REQUESTED BY: Mayor

December 12, 2016
Second Reading: December 27, 2016
FOR REMOVAL

AN ORDINANCE

REPEALING AND REPLACING ORDINANCE 503.01 "ON PUBLIC PROPERTY" OF CHAPTER 503 "ADVERTISING" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID AND DECLARING AN EMERGENCY.

WHEREAS, the City of South Euclid finds the need to change certain ordinances from time to time to meet modern and contemporary standards of the law; and

WHEREAS, the City of South Euclid had previously notified the South Euclid Municipal Court that it would update Ordinance 503.01; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That the previous version of South Euclid Codified Ordinance 503.01 "On Public Property" of Chapter 503 "Advertising" of Part Five "General Offenses Code" of the Codified Ordinances of the City of South Euclid is hereby repealed and replaced with new Ordinance 503.01 "Signage on Public Property" as follows:

~~§ 503.01 ON PUBLIC PROPERTY.~~

- ~~— (a) No person shall, stick, post, affix, , paint, mark, write, print, impress or in any manner attach any poster, sign, handbill, placard or any other notice or advertisement of any description, whether real or personal, upon the property of the City or property over which the City has the care, control or custody.~~
~~— (b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.~~

"503.01 – Signage on Public Property

(a) No person shall display, attach, post, stick, affix, hold, mark, write, print, impress or in any manner erect or maintain any sign, poster, handbill, placard, or any other notice of any type or description, upon or inside any property or building owned by the City or property over which the City has the care, control or custody, whether real or personal, including the interior of all public buildings without first obtaining a permit therefore from the Mayor, except that persons shall be permitted to display non-commercial signage upon real property owned by the City or over which the City has the care, control or custody, provided that said signage shall be displayed in a hand held manner or otherwise affixed to a person's body, but shall not be displayed in contravention of the following time, place or manner restrictions:

- (1) Within seventy-five (75) feet from the exterior of any entry or exit to a building or other accessory structure located upon property owned by the City or property over which the City has the care, control or custody, and nowhere inside any such building or other accessory structure; or
(2) In or on any portion of a parking lot, driveway, building or other portion of property owned by the City or property over which the City has the care, control or custody that is used for vehicular or pedestrian travel; or
(3) No later than forty-five (45) minutes after the adjournment of a meeting of City Council, Board of Zoning Appeals, Planning Commission or Civil Service Commission.

(b) If the laws of the State of Ohio or United States of America, as are now in effect or as may be hereinafter amended, are in conflict with this ordinance, said State or Federal law shall preempt, and this ordinance shall be of no force and effect.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

Section 2: That is hereby found and determined that all formal actions of this council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

~~Section 3:~~ That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety within the City so as to provide the necessary care custody and control over City owned property and therefore should be adopted at the earliest possible time. Wherefore this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2016.

Jane Goodman, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 11-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Russell

May 29, 2018

AN ORDINANCE

AMENDING SECTION 732.02 "CONDITIONAL USES" OF CHAPTER 732 "CONDITIONAL USES IN COMMERCIAL DISTRICTS" OF TITLE THREE "COMMERCIAL DISTRICT REGULATIONS" OF PART SEVEN "PLANNING AND ZONING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, as the codified ordinances are reviewed, City Council periodically finds the need to update certain legislation; and

WHEREAS, Section 732.02 is one such piece of legislation City Council desires to amend to ensure the highest and best use of property is achieved through the zoning code.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Section 732.02 "Conditional Uses" of Chapter 732 "Conditional Uses in Commercial Districts" of Title Three "Commercial District Regulations" of Part Seven "Planning and Zoning Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby amended to read as follows:

732.02 CONDITIONAL USES.

(a) In General. The following uses or facilities may be located within a C-1, C-2 or C-3 Commercial District:

(1) Public and institutional facilities, including:

- A. Churches, synagogues, parish houses, rectories, monasteries and convents;
- B. Public and parochial schools;
- C. Institutions for human care, including hospitals, clinics, sanitariums, convalescent homes, nursing homes, homes for the aged, philanthropic institutions and elderly day care centers;
- D. Institutions for higher education, including colleges, universities, dormitories and trade or business schools;
- E. Government-owned and/or operated buildings or facilities. Parking requirements for public and quasi-public facilities are as scheduled in Section 772.18, Table 1; and
- F. Child-care institutions, including day nurseries, orphanages, special training schools, type-A family day care homes and child day care centers.

(2) Multiple-family residential uses, provided that the following specific conditions are met:

- A. The multiple-family use must be within a building that is not a free-standing residential only building, but instead must be part of a commercial building;
- B. The multiple-family use within a commercial building shall be confined to the floors above the permitted commercial use on the first floor;
- C. There must be adequate parking to accommodate both the permitted commercial and multiple-family residential uses;
- D. The multiple-family parking shall be separated so as not to disrupt the parking patterns for the patrons of the commercial establishment;
- E. The multiple-family residences must have a separate entrance from the commercial use;
- F. The multiple-family use shall not disturb or disrupt the functioning of the building as a commercial use;
- G. Commercial signs and lighting shall be arranged so as not to cause a disturbance to the residential tenants within the building;
- H. The commercial building shall conform to all yard, building height, and loading regulations set forth in the Commercial District regulations;

I. The commercial building shall conform to all landscaping and parking regulations as set forth in Chapter 771 and 772, respectively; and

J. Each multiple-family dwelling unit shall contain a minimum area of 500 square feet.

(3) Public utility uses, such as high-voltage transmission lines and towers, substations and telephone exchanges, provided that:

A. A set of plans, specifications and plot plans, and a statement setting forth the need and purpose of the installations, are filed with the Planning Commission;

B. Proof is furnished to the Planning Commission that the proposed installation in a specific location is necessary for the convenient and efficient operation of the public system, or for the satisfactory and convenient provision of service by the utility to the City or to the area in which the particular use is to be located; and

C. The design of any structure in connection with such facility conforms to the general character of the area in which it is proposed to be located and will in no way adversely affect the safe and comfortable enjoyment of property rights of residents of the zone in which it is located. Adequate and attractive walls and other safety devices will be provided in conjunction with such use and sufficient landscaping, including trees, shrubs and lawn, will also be provided.

(b) Uses or Facilities in R-O Districts. The following uses or facilities may be located in a Residence-Office (R-O) District, provided they conform to the conditions set forth in Sections 722.02 and 722.03:

(1) Public and institutional facilities, including:

A. Churches, synagogues, parish houses, rectories, monasteries, convents and cemeteries;

B. Public and private schools, including colleges, universities and dormitories;

C. Child-care institutions, including day nurseries, orphanages, special training schools, type-A family day care homes and child day care centers;

D. Private recreational club facilities, such as golf, tennis and swimming facilities;

E. Libraries and museums;

F. Government offices;

G. Hospitals, nursing homes, convalescent homes and homes for the aged; and

H. Welfare centers, settlement houses and health centers.

(2) **Banks, savings and loan institutions and securities sales offices provided that these facilities abut on more than one street. Accessory drive-up facilities are conditionally permitted provided they are not attached to primary structure and provide a waiting lane of at least eight automobiles on site.**

(2) (3) Public utilities.

Section 2: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: Wherefore this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approve:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 27-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

May 29, 2018

A RESOLUTION

AUTHORIZING THE MAYOR TO CONVEY CERTAIN REAL PROPERTY OF THE CITY OF SOUTH EUCLID, OHIO TO ONE SOUTH EUCLID.

WHEREAS, the City of South Euclid is the owner of a certain parcel of improved land, as defined in Exhibit A attached hereto; and

WHEREAS, the subject parcel was deeded to the City of South Euclid through the tax foreclosure process; and

WHEREAS, the Council of the City of South Euclid has, upon study and consideration, determined that said parcel does not serve and is not needed for any municipal purpose; and

WHEREAS, in accordance with the agreement for professional services, the City's Community Development Corporation, One South Euclid, has the ability to dispose of the subject parcel and return the land to productive use.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Council has determined the subject parcel does not serve any municipal purpose.

Section 2: That the Mayor be and she is hereby authorized to convey said parcel of real property (as shown in Exhibit A, attached hereto) to the City's Community Development Corporation, One South Euclid, in order to dispose of the property and return the land to productive use.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

EXHIBIT A:

Property with structure (improved land) to be conveyed to One South Euclid:

| PP# | Address | Street Name |
|------------|----------------|--------------------|
| 704-24-002 | 3964 | Colony Road |

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 28-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

May 29, 2018

A RESOLUTION

ADOPTING THE FISCAL BUDGET FOR THE YEAR BEGINNING JANUARY 1, 2019.

WHEREAS, the budget for the City of South Euclid, Ohio for the Fiscal Year beginning January 1, 2019 has been prepared in accordance with the requirements of law, and placed on file with the Fiscal Officer; and

WHEREAS, said budget has been available for public inspection for at least ten (10) days by having copies on file in the office of the Fiscal Officer.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the budget of the City of South Euclid for the fiscal year beginning January 1, 2019 be and is hereby adopted as the fiscal budget of the City of South Euclid for the fiscal year beginning January 1, 2019.

Section 2: That the Clerk be and he is hereby authorized and directed to certify a copy of said budget and a copy of the Resolution and to transmit the same to the Fiscal Officer of Cuyahoga County, Ohio.

Section 3: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 29-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

May 29, 2018

A RESOLUTION

AUTHORIZING THE APPROPRIATION OF UNAPPROPRIATED FUNDS IN THE FOLLOWING FUND: "WATER DISTRIBUTION INFRASTRUCTURE #424" FOR EXPENDITURES OF THE 2018 SOUTH EUCLID WATERMAIN RENEWAL PROGRAM.

WHEREAS, City Council passed Resolution 58-17 authorizing the 2018 South Euclid Water Main Renewal Program; and

WHEREAS, the total cost of the program is higher than anticipated and additional funds must be appropriated; and

WHEREAS, the total cost of the 2018 South Euclid Watermain Renewal Program will be reimbursed by the City of Cleveland Division of Water to the City of South Euclid in the amount of \$578,050.50.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Council of the City of South Euclid hereby authorizes the Finance Director to appropriate unappropriated funds in the "Water Distribution Infrastructure Fund #424" Account in the amount of \$106,825.00 for the purpose of completing the 2018 South Euclid Watermain Renewal Program.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 30-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

May 29, 2018

A RESOLUTION

AUTHORIZING THE TRANSFER OF UNAPPROPRIATED FUNDS IN THE GENERAL FUND TO THE LAND ACQUISITION FUND.

WHEREAS, a payment must be made to the Cleveland Heights-University Heights School District in accordance with the Cedar Center TIF Compensation Agreement entered into between the City of South Euclid and the Cleveland Heights-University Heights School District on December 28, 2011; and

WHEREAS, in order to make the payment, unappropriated funds must be transferred to the proper fund; and

WHEREAS, the Council of the City of South Euclid, Ohio acknowledges that the Ohio Revised Code requires a resolution authorizing the transfer of funds.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Council of the City of South Euclid hereby authorizes the Finance Director to transfer unappropriated funds from the General Fund #101 to the following fund in the amount below:

- | | |
|-------------------------------|--------------|
| 1. Land Acquisition Fund #440 | \$193,788.00 |
|-------------------------------|--------------|

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 31-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

May 29, 2018

A RESOLUTION

AUTHORIZING THE APPROPRIATION OF UNAPPROPRIATED FUNDS IN THE FOLLOWING FUND: "LAND ACQUISITION FUND-TIF PAYMENT #440-8850-52681" IN ORDER TO MAKE A TIF PAYMENT TO THE CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS SCHOOL DISTRICT.

WHEREAS, City Council passed Resolution 30-18 transferring \$193,788.00 to the Land Acquisition Fund; and

WHEREAS, the funds must be appropriated to allow for a TIF Payment to the Cleveland Heights-University School District in accordance with the Cedar Center TIF Compensation Agreement entered into between the City of South Euclid and the Cleveland Heights-University Heights School District on December 28, 2011; and

WHEREAS, the total TIF payment shall be in an amount not to exceed \$365,788.00.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Council of the City of South Euclid hereby authorizes the Finance Director to appropriate unappropriated funds in the "Land Acquisition-TIF Payment #440-8850-52681" Account in the amount of \$193,788.00 to be used towards making a TIF Payment to the Cleveland Heights-University Heights School District in accordance with the Cedar Center TIF Compensation Agreement.

Section 2: That the total TIF Payment made to Cleveland Heights-University Heights School District shall be in an amount not to exceed \$365,788.00.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

ORDINANCE NO.: 12-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

MAY 29, 2018

AN ORDINANCE

CREATING CHAPTER 1335 "SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY" OF TITLE FIVE "OTHER BUILDING PROVISIONS" OF PART THIRTEEN "BUILDING CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:

Section 1: That Chapter 1335 "Small Cell Facilities and Wireless Support Structures within the Right-of-Way" of Title Five "Other Building Provisions" of Part Thirteen "Building Code" of the Codified Ordinances of the City of South Euclid, Ohio be hereby created to read as follows:

1335.01 PURPOSE AND INTENT

(A) The purpose of this chapter is to establish general procedures and standards, consistent with all applicable federal and state laws and local, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures in the right-of-way.

(B) The intent of this chapter is to:

- (1) Establish basic criteria for applications to locate small cell facilities and wireless support structures in the right-of-way and authorize the Mayor or his or her designee to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants;
- (2) Ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
- (3) Preserve the character of the City of South Euclid by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;
- (4) Enhance the ability of wireless communications carriers to deploy small cell facilities and wireless support structures in the city quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;
- (5) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of small cell facilities and wireless support structures for such facilities;
- (6) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

1335.02 APPLICABILITY

(A) Subject to the Ohio Revised Code and approval of an application under this chapter, an operator may collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the city right-of-way.

- (1) An operator shall comply with generally applicable standards that are consistent with this chapter and adopted by the city for construction and public safety in the right-of-way.
- (2) All structures and facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the right-of-way by the city, the traveling public, or other public utilities.

(B) Exclusions.

- (1) Amateur radio facilities. This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- (2) Certain over-the-air receiving devices (OTARD). This chapter shall not govern the installation of any OTARD antennas covered under FCC regulations as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.
- (3) Handsets and user equipment. This chapter shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the right-of-way.

(C) The permitting procedures and authorizations set forth herein shall apply only to the placement of small cell facilities and wireless support structures in the right-of-way, and do not authorize the construction and operation of a wireline backhaul facility.

(D) Relationship to other chapters. This chapter shall supersede all conflicting requirements of other titles and chapters of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right-of-way.

(E) Nothing in this chapter precludes the city from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure.

1335.03 DEFINITIONS

(A) General use of terms.

- (1) The terms, phrases, words, and their derivations used in 1335.01 through 1335.10 shall have the meanings given in this section.
- (2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.
- (3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.
- (4) The words "shall" and "will" are mandatory and "may" is permissive.
- (5) Words not defined shall be given their common and ordinary meaning.

(B) Defined terms.

ABANDONED. Small cell facilities or wireless support structures that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the city and receiving the city's approval.

AFFILIATE. When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

AGENT. A person that provides the city written authorization to work on behalf of a public utility.

ANTENNA. Any transmitting or receiving device used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals, or other communication signals.

APPLICANT. Any person that submits an application to the city to site, install, construct, collocate, modify, and/or operate a small cell facility or wireless support structure in the right-of-way according to the requirements of this chapter.

CABLE OPERATOR. Any person or group of persons:

- (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or
- (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

CABLE SERVICE.

- (1) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
- (2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE FRANCHISE. An initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. 522 Section 546), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

CLEAR ZONE. The unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.

COLLOCATION or COLLOCATE. To install, mount, maintain, modify, operate, or replace small cell facilities on an existing publicly-owned wireless support structure.

DECORATIVE POLE. A pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

- (1) Electric lighting;
- (2) Specially designed informational or directional signage;
- (3) Temporary holiday or special event attachments.

ELIGIBLE FACILITIES REQUEST. Means the same as defined by the FCC in 47 U.S.C. 1455 (a)(2), as may be amended, which defines that term as any request for modification of an existing support structure that does not substantially change the physical dimensions of such support structure, involving:

- (1) Collocation of new small cell facilities;
- (2) Removal of small cell facilities; or
- (3) Replacement of small cell facilities.

FRANCHISE AUTHORITY. See **CABLE FRANCHISE.**

FCC. The U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.

MICRO WIRELESS FACILITY. A small cell facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.

OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES or OMUTCD. The uniform system of traffic control devices promulgated by the Ohio Department of Transportation.

OCCUPY OR USE. With respect to the right-of-way, to place a tangible thing in the right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures,

appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

PERSON. Any individual, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for-profit.

PUBLIC UTILITY or UTILITY. A facilities-based provider of wireless service to one or more end users in this state, or any company described in section 4905.03 of the Ohio Revised Code and as further defined in section 4905.02 of the Ohio Revised Code, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipe-lines, water- works, and sewage disposal systems.

RIGHT-OF-WAY OCCUPANCY FEE. A fee levied to recover the costs incurred by the city and associated with the occupancy or use of right-of-way.

RIGHT-OF-WAY. The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bikepath, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the city which shall, within its proper use and meaning in the sole opinion of the Mayor, entitle a permittee, in accordance with the terms hereof and of any right-of-way permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any service agreement or any right-of-way permit. **RIGHT-OF-WAY** shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation.

RIGHT OF WAY PERMIT, NON-RESIDENTIAL. A permit issued by the City as required that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the public right-of-way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved, improved, or unimproved surface that is part of the right- of-way.

RIGHT OF WAY PERMIT, SMALL CELL. Means a small cell facility or wireless support structure right-of-way occupancy permit as further defined in Section 1335.04

SMALL CELL DESIGN GUIDELINES. Means those detailed design guidelines, specifications and examples promulgated by the Mayor for the design and installation of small cell facilities and wireless support structures in the right-of-way, which are effective insofar as they do not conflict with federal and state law, rule and regulations.

SMALL CELL FACILITY. A wireless facility that meets both of the following requirements:

- (1) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
- (2) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

SMALL CELL FACILITY OPERATOR or OPERATOR. A wireless service provider, or its designated agent, or cable operator, or its designated agent, or a video service provider, or its designated agent, that operates a small cell facility and provides wireless service as defined herein. For the purpose of this chapter, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

SUBSTANTIAL CHANGE OR MODIFICATION. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) It increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
 - a) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the wireless support structure, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (2) It involves adding an appurtenance to the body of the wireless support structure that would protrude from the edge of the structure by more than six feet;
- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for wireless support structures in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (4) It entails any excavation or deployment outside the current site;
- (5) It would defeat the concealment elements of the eligible support structure; or
- (6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in (1) through (4) of this definition.

TOLLING or TOLL PERIOD. The pausing or delaying of the running of a required time period.

UTILITY POLE. A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and decorative poles.

VIDEO SERVICE PROVIDER. A person granted a video service authorization under sections 1332.21 to 1332.34 of the Ohio Revised Code.

WIRELESS FACILITY.

- (1) Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
 - (a) Equipment associated with wireless communications;
 - (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- (2) The term includes small cell facilities.
- (3) The term does not include any of the following:
 - (a) The structure or improvements on, under, or within which the equipment is collocated;
 - (b) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

WIRELESS SERVICE. Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

WIRELESS SERVICE PROVIDER. A person who provides wireless service as defined herein.

WIRELESS SUPPORT STRUCTURE. A pole, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small cell facilities, excluding utility poles or other facilities used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

WIRELINER BACKHAUL FACILITY. A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

1335.04 APPLICATION REQUIRED

(A) General Requirements. The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.

- (1) No person shall occupy or use the right-of-way except in accordance with law.
- (2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.
- (3) No person shall occupy or use the right-of-way without first obtaining, under this Chapter or section 1332.24 or 4939.031 of the Ohio Revised Code, any requisite consent of the city.

(B) Pre-Application Conference.

- (1) Purpose. Applicants are strongly encouraged to contact the city Building Commissioner and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations, design, and the application submittal, and the approval process in order to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the city.
- (2) Appointment Required. An appointment is required for all pre-application conferences. Applicants must contact the designated city staff member as noted on the application form, who will provide applicants an appointment with all applicable city representatives in a timely manner.

(C) Application Required. Anyone seeking to site small cell facilities in the right-of-way shall first duly file a written application with the city, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the City.

(D) Categories of Applications. In accordance with federal and state law, rule and regulation the city shall classify every application to locate small cell facilities in the right-of-way as one of the following types:

(1) Eligible Facilities Request (Type I):

- (a) Involves collocation, replacement, modification, or removal of small cell facilities on an existing publicly owned wireless support structure; and
- (b) Does not substantially change the physical dimensions of the existing wireless support structure.

(2) Collocation with Substantial Modifications (Type II):

- (a) Involves collocation, replacement or modification of small cell facilities on an existing publicly owned wireless support structure; and
- (b) Substantially changes the physical dimensions of the existing publicly owned wireless support structure.

(3) Wireless Support Structure (Type III):

- (a) Involves the construction, modification, or replacement of a wireless support structure owned or operation by a wireless provider associated with a small-cell facility within the right-of-way.

(4) Wireless Support Structure Removal (Non-Residential Right-of-Way Permit):

- (a) Involves the removal of a wireless support structure and associated small cell facilities from within the right-of-way owned or previously operated by a wireless provider.

(B) Required Application Materials. Unless otherwise required by state or federal law, all applicants shall submit to the city the following materials and information associated with each application type in order for the application to be considered complete:

(1) Completed application form and fee as specified on the application.

(2) A scaled and dimensioned site plan (not smaller than one inch equals 50 feet) clearly indicating the following:

- (a) Proposed location within the right-of-way including nearest cross street intersection(s);
- (b) For adjacent parcel(s) perpendicular to the proposed small cell facility location, property ownership, including current ownership;
- (c) All existing conditions within 400 feet of the proposed location, including but not limited to, buildings, utilities within the right-of-way and associated above grade structures, location of electric service and fiber optic cable, all other underground and overhead utilities, small cell structures and facilities, sidewalks/shared-use paths, back of adjacent curb/edge of pavement, driveways, street trees, and protected trees as defined in the City of South Euclid Code of Ordinances.
- (d) Dimensions shall be provided from the proposed small cell facility to existing wireless support structures and equipment, utility structures, back of curb/edges of pavement including driveways, sidewalks and shared-use paths.
- (e) Dimensions shall be provided between proposed wireless support structures and associated ground mounted equipment.
- (f) Scaled and dimensioned elevations/profiles and sections (not smaller than 1 inch equals 5 feet) of existing wireless support structures and/or new wireless support structures clearly indicating the following, as applicable:
 1. Height from established grade at the base of the wireless support structure to the highest point of the wireless support structure and the height to the highest point of proposed antenna or antenna enclosures, as applicable (overall height).
 2. Height from established grade at the base of the wireless support structure to the lowest point of all proposed small cell equipment to be installed on the wireless support structure
 3. The distance from the outer edge of the wireless support structure parallel to the outer edge of all equipment associated with the small cell facility to be installed on the support structure.
- (g) Scaled and dimensioned details of proposed small cell facilities, including elevations/profiles, plans and sections (not smaller than 1 inch equals 5 feet) clearly indicating the following, as applicable:
 1. Height, width, depth and volume in cubic feet of all proposed antenna and exposed elements and/or proposed antenna enclosures.

2. Height, width, depth and volume of all other wireless equipment associated with the facility, with all electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services clearly labeled.
 3. Method of installation/connection to pole or ground, as applicable. Color specifications for all small cell support structures and associated exposed equipment, cabinets and concealment elements.
 4. Electrical plans and wiring diagrams
 5. Footing and foundation drawings and structural analysis sealed and signed by a professional engineer in the State of Ohio
- (h) Manufacturer's specification sheets for all small cell facility equipment proposed, including poles, equipment cabinets, shrouds, or concealment devices, antennas, meters, radios, switches, telecommunications demarcation boxes, and grounding equipment.
 - (i) Scaled and dimensioned landscape plans associated with required screening of ground mounted small cell equipment (where applicable), including a planting plan with proposed plant species, quantities, spacing, height at installation, and planting details.
- (F) Required Application Materials for Small Cell Facilities Removal. For applications involving the removal of small cell facilities under an Eligible Facilities Request, the following materials and information shall be provided:
- (1) Completed application form and fee as specified on the application.
 - (2) A scaled and dimensioned site plan (not smaller than one inch equals 20 feet) clearly indicating the following:
 - (a) Proposed location within the right-of-way including nearest cross street intersection;
 - (b) Adjacent parcel(s) perpendicular to the existing small cell facility location property ownership, including current ownership.
 - (c) All existing conditions within 50 feet of the existing small cell facilities locations to be removed, including but not limited to, buildings, utilities within the right-of-way and associated above grade structures, location of electric service and fiber optic cable, all other underground and overhead utilities, small cell structures and facilities, sidewalks/shared-use paths, back of adjacent curb/edge of pavement, driveways, street trees and plant material.
 - (3) Scaled and dimensioned site and/or structure remediation details in accordance with Small Cell Design Guidelines requirements (not smaller than 1 inch equals 4 feet) clearly indicating the following:
 - (a) Proposed remediation plan for modifications made to city-owned wireless support structures and other areas of the right-of-way associated with collocation of small cell wireless facilities and ground mounted equipment after the removal of these facilities.
 - (b) Proposed restoration of electric and fiber optic connections after removal of small cell facilities, as applicable.
- (G) Required Application Materials for Wireless Support Structure Removal. For applications involving the removal of a wireless support structure installed in association with a small cell facility, the following materials and information must be provided:
- (1) Non-Residential Right-of-Way Permit application and fee as specified.

(A) Permit Application Review Timeframes.

- (1) Eligible Facilities Request (Type I). The city shall process Eligible Facilities Requests in accordance with Ohio Revised Code, 47 C.F.R. 1.40001, and §§99.20 through 99.29 herein not later than sixty days after the date of filing by an entity of a completed application.
- (2) Collocation with Substantial Modifications (Type II). The city shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on an existing wireless support structure where substantial modifications are required to the wireless support structure not later than ninety days after the date of filing by a person of a completed application.
- (3) New Wireless Support Structure (Type III). The city shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility not later than one hundred twenty days following the date of filing of a complete application by an entity,
- (4) Wireless Support Structure Removal (Type IV). The city shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the Non-Residential Right-of-Way Permit required for this activity.

(B) Failure to grant or deny within prescribed timeframes. If the city fails to approve or deny a request for consent under this section or a request for a relevant work permit within the required time period, provided the time period is not tolled under 1335.05(F), the request shall be deemed granted upon the requesting entity providing notice to the city that the time period for acting on the request has lapsed.

(C) Application denials.

- (1) The city shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.
- (2) If a request for consent is denied, the city shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.
- (3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the city, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(D) Tolling of required timeframes.

- (1) The time periods required in 1335.05(A) may be tolled only:
 - (a) By mutual agreement between the entity requesting consent and the city;
 - (b) In cases where the city determines that the application is incomplete; or
 - (c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in 1335.05(A) due to the lack of resources of the city, then the city may toll the time limits as follows:
 1. The time period may be tolled for up to twenty-one days for the first fifteen small cell facility or wireless support structure requests received by the city above the thresholds provided in the Table below within any consecutive thirty-day period:

| Population of city at time Small Cell Facility or Wireless Support Structure Applications are | Number of Applications |
|---|-------------------------|
| _____ persons or less | 15 applications or more |
| _____ persons | 20 applications or more |
| _____ persons | 25 applications or more |
| _____ persons | 30 applications or more |
| _____ persons | 60 applications or more |

2. Further, for every additional fifteen requests that the city receives above the thresholds provided in the Table above the city may toll the time period for those requests for up to fifteen days in addition to the time period provided in division (1)(c)(1) of this section.
 3. In no instance shall the city toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the city shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.
- (2) To toll the time period for incompleteness, the city shall provide written notice to the person requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described herein and in accordance with state and federal law or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.
- (3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the city's notice of incompleteness.
- (4) If a supplemental submission is inadequate, the city shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (E) Timeframe for completion of permit.
- (1) Permits granted for an Eligible Facilities Requests, Collocations with Substantial Modifications and New Wireless Support Structures shall be completed by the operator or its agent within one hundred eighty days after issuance of the permit, unless:
- (a) The city and the operator agree to extend this period; or
 - (b) A delay is caused by make-ready work for a city-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:
 1. The operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services; and
 2. The additional time to complete installation does not exceed three hundred sixty days after issuance of the permit.

(2) If divisions (1)(a) and (b) of this section cannot be met, the permit shall be void unless the city grants an extension in writing to the operator.

(F) Consolidated application for multiple small cell facilities and/or wireless support structures.

(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file at the applicants discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:

(a) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.

(b) The city may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(2) In the case of a consolidated application, the fees provided for in section 4939.0316 of the Ohio Revised Code and §99.23 may be cumulative. However, the city, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.

(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Ohio Revised Code. A request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.

(G) Small Cell and Wireless Support Structure activities not requiring consent.

(1) City consent shall not be required for either of the following activities conducted in the right-of-way:

(a) Routine maintenance of wireless facilities;

(b) The replacement of wireless facilities with wireless facilities that are consistent with the city's current design requirements and guidelines and that are either:

1. Substantially similar to the existing wireless facilities; or
2. The same size or smaller than the existing wireless facilities.

(2) The city may require a Non-Residential Right-of-Way Permit for any activity described in division (1) of this section and for any activity for which consent is authorized herein and in accordance with state and federal law.

1335.06 SMALL CELL DESIGN GUIDELINES

(1) The Building Commissioner shall promulgate detailed Small Cell Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the city shall consider in reviewing an application:

(a) The location of any ground-mounted small cell facilities;

(b) The location of a small cell facility on a wireless support structure;

(c) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;

(d) The design and appearance of a wireless support structure.

- (2) The Small Cell Design Guidelines will provide examples of acceptable small cell facilities including visual depictions.
- (3) The Small Cell Design Guidelines shall provide administrative and procedural guidance to applicants, such as a list of minimum application requirements.
- (4) The provisions in this section shall not limit or prohibit the Building Commissioner's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, the Small Cell Design Guidelines, which do not conflict with state or federal law.
- (5) The Building Commissioner shall have authority to update or supplement the Small Cell Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Small Cell Design Guidelines and the standards articulated in this chapter of the City of South Euclid Code of Ordinances, the language of this chapter takes precedence over the language of the Small Cell Design Guidelines.

1335.07 STANDARD CONDITIONS OF PERMIT APPROVAL

- (A) Standard conditions of approval. Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this Section 1335.07. The Building Commissioner may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.
- (B) Small Cell Facility Permit duration. The city's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the city, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under Section 1335.07(N).
- (C) Compliance with all applicable laws. Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.
- (D) Inspections; emergencies. The city or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The city reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (E) Relocation or adjustment as requested by city. If requested by the city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at no cost to the city, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with local law.
- (F) Contact information for responsible parties. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Building Department.
- (G) Indemnification. Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the city and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right- of-way.

- (H) Interference with public safety radio services. In the event that the city has reason to believe that permittee's radio communications operations are causing interference with the city's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the city to either rule out permittee as the interference source or eliminate the interference. Cooperation with the city may include, but shall not be limited to, temporarily switching the small cell facilities on and off for testing.
- (I) Adverse impacts on adjacent properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.
- (J) Good condition required. Small cell facilities and support structures shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property.
- (K) Graffiti abatement. Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.
- (L) RF exposure compliance. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
- (M) Relocation for public improvement projects. Permittee shall remove and relocate the permitted small cell facility and/or support structure at permittee's sole expense to accommodate construction of a public improvement project by the City as required under this chapter.
- (N) Removal of small cell facilities if use discontinued or abandoned.
 - (1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner shall submit a written notice to the city of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility shall be considered abandoned and the city may remove it at the owner's expense.
 - (2) Small cell facilities and wireless support structures determined by the city to be abandoned without application notice from the owner may be removed by the city at the owner's expense to ensure the public health, safety, and welfare.

1335.08 SAFETY REQUIREMENTS

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

1335.09 RECOVERY OF COSTS

- (A) Application processing fee. For processing an application for consent, the city may charge a fee for each small cell facility and wireless support structure requested as prescribed under section 4939.031 of the Ohio 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 right-of-way, the city may charge an annual fee as prescribed under 4939.031 of the Ohio 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) Tax liabilities and assessments not applicable. Placement of small cell facilities in the right-of-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.

1335.10 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.

Section 2: That is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety and for the further reason it is necessary to levy assessments to reimburse the City for said work. Wherefore, this Ordinance shall take effect upon passage and approval.

Passed this _____ day of _____, 2018.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law