

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

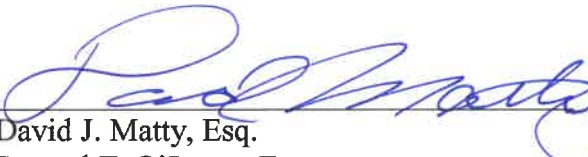
<b>Notification of Proposed Enactment</b>	)	
<b>of a Public Way Ordinance by the</b>	)	<b>Case No. 18-0888-AU-PWN</b>
<b>Village of Bratenahl, Ohio</b>	)	

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The Village of Bratenahl, Ohio, by and through its Village Solicitor, hereby notifies the Public Utilities Commission of Ohio pursuant to R.C. 4939.05(E) of the intention of the Village of Bratenahl as an Ohio Municipal Corporation to consider the enactment of an ordinance that would amend existing right-of-way provisions codified at Chapter 941 and Chapter 943 of the Codified Ordinances of the Village of Bratenahl.

Village of Bratenahl, Ohio

By:

  
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3970Name	BECKENBACH			BENJAMIN			BURKE-JONES			JONES			MURPHY			PUFFENBERGER		
Vote	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs
Suspension																		
Passage																		

ORDINANCE NO: 3970

INTRODUCED BY:

AN ORDINANCE ENACTING AND ADDING SECTION 941.12 ENTITLED  
 “REGULATION OF SMALL CELL FACILITIES” TO THE STREETS AND  
 PUBLIC SERVICES CODE AND DECLARING AN EMERGENCY

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Bratenahl, State of Ohio, that:

SECTION 1. Section 941.12 of the Streets and Public Services Code be enacted and added to read as follows:

**“941.12 REGULATION OF SMALL CELL FACILITIES**

Notwithstanding anything to the contrary in this section, all regulations for small cell facilities and wireless support structures are contained within and controlled by the provisions of Chapter 943 of the Streets and Public Services Code.”

SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, health and welfare of the inhabitants of the Village of Bratenahl by reason of the immediate necessity to enact and add Section 941.12 of the Codified Ordinances of the Village of Bratenahl. Wherefore, this Ordinance shall be in full force and effect immediately after its passage.

PASSED:

APPROVED:

\_\_\_\_\_  
 John M. Licastro, Mayor

ATTEST:

\_\_\_\_\_  
 Thomas M. Cornhoff, Village Fiscal Officer

Name	BECKENBACH			BENJAMIN			BURKE-JONES			JONES			MURPHY			PUFFENBERGER		
Vote	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs	Aye	Nay	Abs
Suspension																		
Passage																		

ORDINANCE NO: 3971

INTRODUCED BY:

AN ORDINANCE ENACTING AND ADDING CHAPTER 943 ENTITLED  
 “SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES”  
 TO THE STREETS AND PUBLIC SERVICES CODE  
 AND DECLARING AN EMERGENCY

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Bratenahl, State of Ohio, that:

SECTION 1. Chapter 943 of the Streets and Public Services Code be enacted and added to read as follows:

**“CHAPTER 943**  
**Small Cell Facilities and Wireless Support Structures**

**943.01 Purpose and Intent**

**943.02 Applicability**

**943.03 Definitions**

**943.04 Application Required**

**943.05 Application Review Process and Timeframes**

**943.06 Location and Design Standards for Small Cell Facilities and Wireless Support Structures**

**943.07 Standard Conditions of Permit Approval**

**943.08 Safety Requirements**

**943.09 Location and Design Standards For Small Cell Facilities And Wireless Support Structures Outside The Right-of-way**

**943.10 Recovery of Costs; Use of Revenue**

**943.11 Severability**

**943.99 Penalties**

**943.01 PURPOSE AND INTENT**

(a) The purpose of this chapter is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures in the village's right-of-way, or on public or private property.

(b) The intent of this chapter is to:

- (1) 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;
- (2) Preserve the character of the village 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;
- (3) Enhance the ability of wireless communications carriers to deploy small cell facilities and wireless support structures in the village quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;
- (4) 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;
- (5) 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.

#### **943.02 APPLICABILITY**

- (a) Subject to the 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 village right-of-way or on public or private property.
  - (1) An operator shall comply with generally applicable standards that are consistent with this chapter and adopted by the village for construction and public safety in the right-of-way or on public or private property.
  - (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 village, the traveling public, or other public utilities.
- (b) Except as provided in this chapter as well as any franchise, pole attachment, or other agreements between the village and a cable operator or public utility, the village shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell facility in the right-of-way or on public or private property, or otherwise prohibit or restrain the activities as described in this section, except as otherwise provided in division (B) of section 4939.0311 of the Revised Code.
- (c) Exceptions for prior franchises or agreements are as outlined in section 4939.08 of the Revised Code.
- (d) 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 codified in 47 C.F.R. §§1.4000 et seq., as may

be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.

- (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 or on public or private property.

- (e) The permitting procedures and authorizations set forth herein do not authorize the construction and operation of a wireline backhaul facility.
- (f) 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 and on public or private property.
- (g) Nothing in this chapter precludes the village from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure.

### **943.03 DEFINITIONS**

#### *General use of terms.*

- (a) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.
- (b) 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.
- (c) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.
- (d) The words "shall" and "will" are mandatory and "may" is permissive.
- (e) Words not defined shall be given their common and ordinary meaning.

#### *Defined terms.*

- (a) "Abandoned" means 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 village and receiving the village's approval.
- (b) "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.
- (c) "Agent" means a person that provides the village written authorization to work on behalf of a public utility.
- (d) "Antenna" means any communications equipment designed for the purpose of the transmission and/or reception of radio frequency ("RF") radiation, to be operated or operating from a fixed location to facilitate wireless communications services, including associated accessory equipment.
- (e) "Applicant" means any person that submits an application to the village to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the right-of-way, or on public or private property according to the requirements of this chapter.
- (f) "Cable Operator" means 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;

- (g) *"Cable Service" means:*
  - (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;
- (h) *"Cable Franchise"* means an initial authorization, or renewal thereof, 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.
- (i) *"Clear Zone"* means 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.
- (j) *"Collocation Or Collocate"* means to install, mount, maintain, modify, operate, or replace small cell facilities on a wireless support structure, or on an existing building located outside the right-of-way.
- (k) *"Decorative Pole"* means a pole, arch, or structure other than a street light pole placed in the public way, or on public or private property specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: electric lighting; specially designed informational or directional signage; temporary holiday or special event attachments.
- (l) *"Design Guidelines, Small Cell"* means any detailed guidelines and examples adopted and promulgated by the Building Department for the design and installation of structures supporting small cell facilities and wireless support structures in the right-of-way, or on public or private property, which are effective insofar as they do not conflict with FCC rules and regulations or the design standards established in this chapter.
- (m) *"Design Standards"* means standards established in this chapter for the design, construction, and installation of small cell facilities and wireless support structures in the right-of-way, or on public or private property, which may be supplemented by Small Cell Design Guidelines, and which are effective insofar as they do not conflict with state or federal law, including without limitation any applicable FCC rules and regulations.
- (n) *"Eligible Facilities Request"* has the same meaning as in 47 U.S.C.1455 (a)(2), as may be amended, defined herein as "any request for modification of an existing wireless support structure that does not substantially change the physical dimensions of such wireless support structure, involving:
  - (1) Collocation of new small cell facilities;
  - (2) Removal of small cell facilities; or
  - (3) Replacement of small cell facilities.
- (o) *"FCC"* means the U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.
- (p) *"Micro Wireless Facility"* means 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.
- (q) *"Ohio Manual of Uniform Traffic Control Devices or OMUTCD"* means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation.
- (r) *"Occupy Or Use"* means with respect to the right-of-way, public property or private property, to place a tangible thing in the right-of-way, public property or private property 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.

- (s) *"Person"* means, without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.
- (t) *"Public Utility"* means wireless service provider as defined in division (A)(20) of section 4927.01 of the Revised Code or any company described in section 4905.03 of the Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code; and includes any electric supplier as defined in section 4933.81 of the Revised Code.
- (u) *"Right-Of-Way Fee"* means a fee levied to recover the costs incurred by the village and associated with the occupancy or use of right-of-way.
- (v) *"Right-Of-Way"* means 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 bike path, 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 village which shall, within its proper use and meaning in the sole opinion of the Commissioner of Buildings, 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.
- (w) *"Small Cell Facility"* means the 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.
- (x) *"Small Cell Facility Operator Or Operator"* means 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.
- (y) *"Stealth Small Cell Facility"* means any small cell facility that is architecturally integrated into a building or other concealing structure on public or private property not in the right-of-way, such that no portion of any antenna, antenna equipment or any other apparatus associated with the function of the facility is visible.
- (z) *"Substantial Change"* means any modification to an existing small cell facility and wireless support structure that meets the criteria of §943.04(d)(2)B.
- (aa) *"Tolling or Toll Period"* means the pausing or delaying of the running of a required time period.
- (bb) *"Utility Pole"* means 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.

(cc) *"Video Service Provider"* means the same meaning as in section 1332.21 of the Revised Code.

(dd) *"Wireless Facility"* means:

- (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.

(ee) *"Wireless Service"* means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

(ff) *"Wireless Service Provider"* means a person who provides wireless service as defined in division (A)(20) of section 4927.01 of the Revised Code.

(gg) *"Wireless Support Structure"* means 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.

(hh) *"Wireline Backhaul Facility"* means a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

(ii) *"Work Permit"* means a permit issued by the Village 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 or improved surface that is part of the public right-of-way.

#### 943.04 APPLICATION REQUIRED

(a) General Requirements. The following requirements shall apply to all proposed small cell facilities and wireless support structures.

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

(b) Pre-Application Conference. Applicants shall contact the village and request a pre-application conference for any proposed small cell wireless communications facility. This meeting will be arranged by the Building Department and will include staff, the applicant, and any applicable utility providers. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations, and design, 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 village.



- (c) Application Required. Anyone seeking to locate small cell facilities in the right-of-way or on public property or private property shall first duly file a written application with the Building Department, in accordance with the requirements in this chapter and with any adopted Small Cell Design Guidelines.
- (d) Categories of Applications. In accordance with federal and state law, every application to locate a small cell facility in the right-of-way or on public property or private property shall be classified as one of the following types:
  - (1) *Eligible Facilities Request (Type I) application:*
    - A. Involves collocation, replacement, modification, or removal of small cell facilities on an existing wireless support structure ; and
    - B. Except for the removal of small cell facilities or an existing wireless support structure, does not substantially change the physical dimensions of the existing wireless support structure, as determined by 943.04(d)(2)B and;
    - C. Complies with all applicable standards set forth in this chapter.
  - (2) *Collocation with Substantial Change (Type II) application:*
    - A. Involves collocation, replacement, or modification of small cell facilities on an existing wireless support structure; and
    - B. The collocation, replacement or modification substantially changes the physical dimensions of the existing wireless support structure. For the purposes of this chapter a substantial change is any modification that meets one or more of the following criteria:
      - 1. It increases the height of the structure by more than 10% or more than ten feet, whichever is greater. Changes in height should be measured from the dimensions of the wireless support structure, inclusive of originally approved appurtenances;
      - 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 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; or
      - 5. It would defeat the concealment elements of the wireless support structure.
  - (3) *Wireless Support Structure (Type III) application:* Involves the construction, modification, or replacement of a wireless support structure owned or operated by a wireless provider associated with a small cell facility in the right-of-way.
  - (4) *Wireless Support Structure Removal (Type IV) application:* Involves the removal of a wireless support structure and associated small cell facilities owned or previously operated by a wireless provider.
  - (5) *Small Cell Facility outside the Right-Of-Way (Type V) application:* Involves the collocation, replacement, or modification of small cell facilities on a new or existing wireless support structure located on public or private property not in the right-of-way.
- (e) Required Submission Materials for Applications Involving Installation of Small Cell Facilities. Unless otherwise required by state or federal law, all applicants shall submit to the village the following materials and information associated with each application type in order for the application to be considered complete:
  - (1) For a consolidated application for multiple small cell facilities and/or wireless support structures, the applicant shall provide a map and list of the location of all facilities included in the consolidated application.

- (2) Eligible Facilities Request (Type I) Application: The applicant shall submit the information necessary to determine whether an application meets the criteria for an Eligible Facilities Request.
- (3) Type II, Type III, and Type V Application. The following information must be submitted for all Type II, Type III, and Type V applications.
- A. Completed application form and application fee.
  - B. A scaled and dimensioned site plan (not smaller than one inch equals 100 feet) encompassing all property within 500 feet of the proposed location and clearly indicating the following:
    - 1. Proposed location of the small cell facility including nearest cross street intersection(s).
    - 2. The current ownership of all adjacent parcel(s) perpendicular to the proposed small cell facility location.
    - 3. 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, and street trees.
    - 4. 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.
    - 5. Dimensions shall be provided between proposed wireless support structures and associated ground mounted equipment.
  - C. Scaled and dimensioned elevations/profiles and sections (not smaller than 1/4 inch equals 1 foot) of existing wireless support structures and/or proposed 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.
  - D. Scaled and dimensioned details of proposed small cell facilities, including elevations/profiles, plans and sections (not smaller than 1/4 inch equals 1 foot) 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.
    - 4. Color specifications for all small cell support structures and associated exposed equipment, cabinets and concealment elements.
    - 5. Electrical plans and wiring diagrams.
    - 6. Footing and foundation drawings and structural analysis sealed and signed by a professional engineer in the State of Ohio.

- E. 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.
  - F. 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 Submission Materials for Applications Involving Removal of Small Cell Facilities and/or Support Structures. For applications involving the removal of small cell facilities under an Eligible Facilities Request (Type I) and/or Wireless Support Structure Removal (Type IV) application the following information shall be provided.
- (1) Completed application form and application fee.
  - (2) A scaled and dimensioned site plan (not smaller than one inch equals 20 feet) clearly indicating the following:
    - A. Existing location of the wireless support structure on which the small cell facilities to be removed are located, including nearest cross street intersection(s).
    - B. The current ownership of all adjacent parcel(s) perpendicular to the existing small cell facility location property.
    - 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 (not smaller than 1/4 inch equals 1 foot) clearly indicating the following:
    - A. Proposed remediation plan for modifications made to village-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.

#### **943.05 APPLICATION REVIEW PROCESS AND TIMEFRAMES**

##### **(a) Permit Application Review Timeframes**

- (1) Eligible Facilities Request (Type I).
  - A. The village shall process Eligible Facilities Requests submitted in accordance with the Revised Code, 47 C.F.R. 1.40001, and this chapter, not later than sixty days after the date of filing of a completed application.
  - B. If the Commissioner of Buildings determines that the applicant's request is not covered by Section 943.04(d)(1), the timeframe under Section 943.05(b) will begin to run from the issuance of the Commissioner of Buildings' decision that the application is not a covered request. To the extent such information is necessary, the Commissioner of Buildings may request additional information from the applicant to evaluate the application under Section 943.04(e)(3).
- (2) Type II, Type III and Type V Applications. Following the date of filing of a complete application by an entity, the village shall grant or deny the following application types for consent not later than:

- A. 90 days to collocate, replace or modify a small cell facility on an existing wireless support structure where substantial modifications are required to the wireless support structure (Type II Applications);
    - B. 120 days to construct, modify, or replace a wireless support structure associated with a small cell facility (Type III Applications);
    - C. 120 days as to Type V applications pertaining to sites outside the right-of-way or as set forth in the ODOT process.
  - (3) *Wireless Support Structure Removal (Type IV)*. The village shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way or from public or private property within sixty days.
- (b) Failure to grant or deny within prescribed timeframes. If the village 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 section 943.05(d), the request shall be deemed granted upon the requesting entity providing notice to the village that the time period for acting on the request has lapsed.
- (c) Application denials by the village.
- (1) The village shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures.
  - (2) If a request by a person for consent is denied, the village shall provide to the person in writing its reasons for denying the request and such information as the person may reasonably request to obtain consent. If a request for consent is denied for an activity described in section 4939.031 of the Revised Code, the reasons required under this division shall be supported by substantial, competent evidence and 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 village, 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 for consent required in section 943.05(a) may be tolled only:
    - A. By mutual agreement between the entity requesting consent and the village;
    - B. In cases where the village 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 section 943.05(a) due to the lack of resources of the village, then the village 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 village and for the first thirty small cell facility or wireless support structure requests received by the village within any consecutive thirty-day period.
      - 2. Further, for every additional fifteen requests that the village receives, and every additional thirty requests that the village receives within any consecutive thirty-day

period, the village may toll the time period for those requests for up to fifteen days in addition to the time period provided in division (d)(1)(C)1 of this section.

3. In no instance shall the village toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the village 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 village 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 village's notice of incompleteness.
  - (4) If a supplemental submission is inadequate, the village 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 (d)(1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
- (e) Timeframe for completion of permit.
- (1) A collocation or a new wireless support structure for which a permit is granted shall be completed by the operator or its agent within one hundred eighty days after issuance of the permit, unless:
    - A. The village and the operator agree to extend this period; or
    - B. A delay is caused by make-ready work for a village-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 (e)(1)A and B of this section cannot be met, the permit shall be void unless the village grants an extension in writing to the operator.
- (f) Consolidated application for multiple small cell facilities and/or support structures.
- (1) An applicant seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file at the applicant's 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 village 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 943.10 may be cumulative. However, the village, 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 943.05(d). 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) Village consent shall not be required for either of the following activities conducted in the right-of-way, public property or private property:
    - A. Routine maintenance of wireless facilities;
    - B. The replacement of wireless facilities with wireless facilities that are consistent with the village'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 village may require a work 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 federal and state law.
  - (3) Notwithstanding the amendments made to sections 4939.01 to 4939.09 of the Revised Code by H.B. 478 of the 132nd General Assembly, a cable or video service provider shall not be required to obtain permits from the village or to pay fees, with the exception of work permits and associated fees, to place, operate, maintain, or replace micro wireless facilities pursuant to an existing franchise or video service authorization under Chapter 1332 of the Revised Code; nor shall a holder of an existing franchise or video service authorization be required to obtain additional authorizations or to pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization under Chapter 1332 of the Revised Code.

**943.06 LOCATION AND DESIGN STANDARDS FOR SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY**

- (a) Applications for small cell facilities and wireless support structures in the right-of-way shall comply with the general requirements and design standards in this section, and with any design guidelines that may be adopted to supplement and further explain the design standards.
- (b) General Standards.
  - (1) Utility Undergrounding Required. All service lines to the proposed small cell facilities shall be undergrounded in planned residential developments if all other utilities in the planned residential development are also underground.
  - (2) Electric and Fiber Optic Supply.
    - A. Independent Power Source Required. Small cell facilities located on Village-owned support structures may not use the same power source providing power for the existing facilities original to the purposes of the support structure.

- B. Applicant shall coordinate, establish, maintain and pay for all power and communication connections with private utilities.
- (3) Wiring, Cables and Conduit Requirements.
  - A. All wiring and cables must be housed within the steel support structure pole and extended vertically within a flexible conduit, except when collocated on an existing wireless support structure and/or on a wood wireless support structure, in which case all wiring and cables must be housed in a conduit.
  - B. Above ground wires, cables, connections and conduit are prohibited, except as may be specified in the Small Cell Design Guidelines based on the specific context and characteristics of the wireless support structure.
  - C. Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the pole except completely within the approved enclosures or cabinets
- (4) Lighting associated with small cell facilities is prohibited. Any internal lights associated with electronic equipment shall be shielded from public view.
- (5) Signage is prohibited on all small cell facilities and wireless support structures, including stickers, logos, and other non-essential graphics and information unless required by FCC.
- (6) Prohibited Wireless Facilities. Microwave or other wireless backhaul is not permitted within the right-of-way.
- (c) Existing Wireless Support Structures
  - (1) Collocation encouraged. The collocation of small cell facilities on existing support structures is strongly encouraged as a means to minimize the extent of intrusion of redundant support structures within the right-of-way.
  - (2) Structural Integrity of Existing Support Structures.
    - A. The village shall not authorize any attachments to village-owned infrastructure that negatively impacts the structural integrity of the support structure.
    - B. The village may condition approval of the collocation on replacement or modification of the wireless support structure at the operator's cost if the village determines that replacement or modification is necessary for compliance with its written construction or safety standards. A replacement or modification of the wireless support structure shall conform to the applicable design guidelines and the village's applicable specifications for the type of structure being replaced. The village may retain ownership of a replacement wireless support structure.
  - (3) Maximum Permitted Height. For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be collocated at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure by more than five feet, unless otherwise specified in the Small Cell Design Guidelines based on the specific context and characteristics of the wireless support structure.
  - (4) Right to reserve space on wireless support structure or pole. The village may reserve space for future public safety or transportation uses in the public way or on a wireless support structure or pole owned by the village in a documented and approved plan in place at the time an application is filed.
    - A. A reservation of space shall not preclude placement of a pole or collocation of a small cell facility.
    - B. If replacement of the village's pole or wireless support structure is necessary to accommodate the collocation of the small cell facility and the future use, the operator shall pay for the replacement of the pole or wireless support structure, and the replaced pole or wireless support structure must accommodate the future use.

(d) New Wireless Support Structures/Poles (Type III Application)

(1) Location.

A. Required Setbacks.

1. The centerline of new support structures shall be installed in alignment with existing street trees and other poles along the same right-of-way, unless otherwise required in the Small Cell Design Guidelines.
2. In no case shall a new support structure be located less than two feet from the travel-way/face of curb, sidewalk, or shared-use path as measured to the nearest part of the support structure.
3. New support structures shall be located a minimum of six feet from any permanent object or existing lawful encroachment into the right-of-way.

B. Fall Zones. Fall-zone requirements for wireless support structures shall be consistent with these requirements for other structures of similar types and height within the right-of-way.

C. Required Spacing. Minimum separation between new wireless support structures and other existing facilities shall be as follows:

1. 300 linear feet between proposed Type III and existing Type III support structures, or permitted but unconstructed Type III support structures, at the time a complete application is filed with the village, irrespective of the owner/operator of the small cell facilities.
2. 20 linear feet between proposed Type III support structures and all other wireless support structures, including existing light or utility poles.

D. Placement Considerations. To the extent possible, all new wireless support structures should be placed as follows:

1. In a manner that meets ADA requirements and does not impede, obstruct or hinder pedestrian, bicycle or vehicular travel.
2. As close as practicable to the intersection of property lines, or along the secondary street frontage for corner lots.
3. Outside of the critical root zone of existing street trees, but in no case less than 15 linear feet from existing tree trunks.

(2) Maximum Permitted Height

A. The overall height of a new wireless support structure and any collocated antennas shall not be more than forty feet in height above established grade at the base of the structure, except as regulated in division (2)(B).

B. The overall maximum height of a new wireless support structure shall not be more than thirty-five feet in height above established grade at the base of the structure in areas meeting the following criteria:

1. The area is within three hundred feet of the proposed site for a new wireless support structure in the same right-of-way or a connecting right-of-way, and there are no wireless support structures or utility poles taller than thirty feet in height above ground level;
2. In locations where the maximum allowable height for building construction in the zoning district is thirty-five feet or less.

(3) Design Requirements

A. Materials, shape and dimensions. All new wireless support structures shall be constructed of solid hot-dipped galvanized steel, be round in shape with the pole shaft tapered in diameter



from the base to the top, with a maximum diameter of 12 inches at the base and a minimum diameter of 10 inches at the top.

- B. Transformer Base. All new wireless support structures shall include a one-piece cast aluminum alloy transformer base in a breakaway design, consistent with specifications of this chapter, and subject to the Commissioner of Buildings' review and approval.
  - C. Foundation/Footer.
    - 1. All new wireless support structures must be supported with a reinforced concrete foundation and footer designed, stamped, sealed and signed by a professional engineer licensed and registered in the State of Ohio, and subject to the Commissioner of Buildings' review and approval.
    - 2. Anchor bolts must be constructed from steel (high strength) per ATSM A36, threaded (J-type / L-type), hot-dip galvanized per ODOT CMS Item No. 711.02 and in a length and diameter determined, stamped, sealed and signed by a professional engineer licensed and registered in the State of Ohio, and subject to the Commissioner of Buildings' review and approval.
    - 3. All anchor bolts must be concealed from public view with an appropriate pole boot or cover, powder coated to match the pole.
  - D. Color. New wireless support structures, including the breakaway transformer base, shall have a powder coated finish in dark earth tone colors such as dark green, dark brown or black consistent with the color of other poles in the immediate vicinity.
- (4) Multiple requests for wireless support structures in violation of spacing requirements. If multiple requests are received by the village to install two or more poles that would violate applicable spacing requirements under division (d)(1)C of this section, or to collocate two or more small cell facilities on the same wireless support structure, notwithstanding division (F) of section 4939.0313 of the Revised Code, the village may resolve conflicting requests through whatever reasonable and nondiscriminatory manner it deems appropriate.
- (5) Village directed alternate location for wireless support structures. The village may propose an alternate location to any proposed location of a new wireless support structure, subject to the following:
- A. That the alternate location is within 100 feet of the proposed location or within a distance that is equivalent to the width of the right-of-way in or on which the new wireless support structure is proposed, whichever is greater; and
  - B. The operator shall use the alternate location if it has the right to do so on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.
- (6) Waiver to village directed alternate wireless support structure location or undergrounding requirements. Small cell operators may seek a waiver of the undergrounding or alternative location requirements for the placement of a new wireless support structure to support small cell facilities if the operator is unable to achieve its service objective using a small cell facility under the following circumstances:
- A. From a location in the public way where the prohibition does not apply;
  - B. In a utility easement the operator has the right to access; or
  - C. In or on other suitable locations or structures made available by the village at reasonable rates, fees, and terms. The village shall process waivers in a reasonable and nondiscriminatory manner that does not have the effect of prohibiting the provision of wireless service.

(e) Antenna

- (1) Location. All antenna to be installed on new or existing wireless support structures shall be mounted to the top of the wireless support structure and aligned with the centerline of the

wireless support structure, unless otherwise specified in the Small Cell Design Guidelines based on the specific context and characteristics of the wireless support structure.

- (2) Size. Each antenna shall be located entirely within 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.

- (3) Design

- A. Shape. Antennas shall be cylindrical in shape, or completely housed within a cylindrical enclosure or radome.
  - B. Color. Exposed antennas and antenna enclosures shall match the color specifications of the wireless support structure.

- (f) Small Cell Facilities Installed on Wireless Support Structures.

- (1) Size. Exclusive of the antenna, all wireless equipment associated with the facility shall not cumulatively exceed 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.

- (2) Equipment Enclosures Required. All small cell facilities mounted to wireless support structures shall be fully contained within enclosures or cabinets.

- (3) Required Clear Height. All small cell facilities mounted to wireless support structures shall provide a minimum of 10 feet of clear space on the pole as measured from established grade to the lowest point of any facility/equipment cabinets or concealment apparatus mounted to the support structure.

- (4) Maximum Horizontal Offset from Support Structure. Small cell equipment cabinets or enclosures shall not extend more than 10 inches beyond the pole centerline in all directions.

- (5) Design

- A. Cabinet or Enclosure Shape.

- 1. Small cell equipment cabinets or enclosures shall be rectangular in shape, with the vertical dimension being greater than the horizontal.
    - 2. Generally, the cabinet or enclosure shall be no wider than the maximum diameter of the support structure.

- B. Installation Method.

- 1. All pole-mounted equipment cabinets or enclosures must be installed as flush to the pole as possible.
    - 2. Any installation brackets connecting the cabinets to the pole shall not extend more than 2 inches from the pole, and shall include metal flaps (or “wings”) to fully conceal the gap between the cabinet and pole.

- C. Cabinet or Enclosure Material. Cabinets and other enclosures installed as part of a new wireless support structure (Type III application) shall be constructed of the same material as the pole.

- D. Color. Cabinets or enclosures shall match the color specifications of the wireless support structure.

- (g) Ground Mounted Small Cell Facilities

- (1) Location

- A. Required Setbacks.

1. In no case shall ground mounted small cell facilities be located less than two feet from the travel-way/face of curb, sidewalk, or shared-use path as measured to the nearest part of the cabinet or enclosure.
  2. Ground mounted small cell facilities and associated required screening shall be located a minimum of six feet from any permanent object or existing lawful encroachment into the right-of-way.
- (2) Size. All small cell wireless equipment associated with the facility shall not cumulatively exceed 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.
- (3) Maximum Permitted Height. The maximum height for ground mounted small cell facilities shall not exceed 2.5 feet as measured from established grade at the base of the facility.
- (4) Equipment Enclosures Required. All ground mounted small cell facilities shall be fully contained within enclosures or cabinets.
- (5) Design Requirements
- A. Screening required. Evergreen plant material shall be used for screening and shall be planted to ensure that the equipment will be screened to its full height within two years of planting.
  - B. Concrete pad or slab. A precast concrete or cast-in-place pad, or pad constructed of similar suitable material, shall be installed as a foundation for any ground mounted equipment cabinet.
  - C. Breakaway Design. All objects placed within the clear zone shall feature breakaway design.
  - D. Color. Ground mounted small cell facility cabinets and enclosures shall be a dark green or black powder coated finish.
- (h) Small Cell Design Guidelines.
- (1) The Building Department may promulgate detailed Small Cell Design Guidelines that provide additional objective, technically feasible criteria for the design and installation of small cell facilities, which the department shall consider in reviewing an application.
  - (2) The intent of the Small Cell Design Guidelines is to provide greater detail, description, and examples of acceptable small cell facilities including visual depictions.
  - (3) The Commissioner of Buildings 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, the language of this chapter takes precedence over the language of the Small Cell Design Guidelines.

#### **943.07 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, public property or private property shall be conditioned on compliance with the standard conditions of approval provided in this Section 943.07. The Commissioner of Buildings may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare, so long as such additional or modified conditions are in accordance with federal law, the Revised Code, and this Chapter.
- (b) Small Cell Facility Permit duration. The village'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 village, 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 work permit requirements and may stop paying annual charges or fees under section 943.10.

- (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 village or its designee may inspect small cell facilities and wireless support structures in the right-of-way, public property or private property upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The village 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 village. If requested by the village, 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 village, 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 Commissioner of Buildings.
- (g) Indemnification. Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way, public property or private property shall indemnify, protect, defend, and hold the village 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, public property or private property, 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 village has reason to believe that permittee's radio communications operations are causing interference with the village's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the village to either rule out permittee as the interference source or eliminate the interference. Cooperation with the village 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) General maintenance. The site and the facility, including but not limited to all landscaping, support structures, equipment enclosures, and related small cell equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
- (k) 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.
- (l) Graffiti abatement. Permittee shall upon discovery of graffiti by Permittee or notification by the Village promptly remove any graffiti on the small cell facility at permittee's sole expense.
- (m) 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.
- (n) 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 village as required under Chapter 941 and/or this Chapter 943 of the village code.
- (o) 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 provide written notice to the village or property owner 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.
  - (2) Small cell facilities and/or wireless support structures determined by the village to be abandoned may be removed by the village at the owner's expense to ensure the public health, safety, and welfare.

#### **943.08 SAFETY REQUIREMENTS**

- (a) Prevention of failures and accidents. Any person who owns a small cell facility sited in the right-of-way, or on public or private property 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 and wireless support structures, 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 village 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 village property caused by an operator or its agent of each small cell facility which the owner installs in the right-of-way, or on

public or private property in case the village 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.

**943.09 LOCATION AND DESIGN STANDARDS FOR SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES OUTSIDE THE RIGHT-OF-WAY**

- (a) General Standards. The General Standards set forth in Section 943.06(b) are also applicable to small cell facilities and wireless support structures outside the right-of-way.
- (b) Collocation on Existing Structures.
  - (1) The collocation of small cell facilities on existing buildings and structures and designed as a stealth facility is strongly encouraged.
  - (2) For building-mounted stealth facilities, materials shall be used that match in color, size, proportion, style, and quality with the exterior design and architectural character of the building or structure. Added architectural elements that are out of character with the existing structure or otherwise direct unnecessary attention to the structure are not permitted.
  - (3) Where a small cell facility is proposed to be located on a building rooftop, all equipment associated with the facility shall be enclosed within an architecturally integrated penthouse or otherwise be completely screened to the satisfaction of the Commissioner of Buildings. Required screening shall be decorative and of a design, color, and texture that is architecturally integrated with the building it is on.
- (c) New Wireless Support Structures/Poles.
  - (1) Location.
    - A. Required Setbacks. In no case shall a new support structure be located less than forty feet from any adjacent single-family residential property line, or from the edge of the right-of-way.
    - B. Required Spacing. Minimum separation between new wireless support structures and other existing facilities shall be 300 linear feet between proposed Type V and existing Type I, Type II or Type III support structures, or permitted but unconstructed Type III support structures, at the time a complete application is filed with the village, irrespective of the owner/operator of the small cell facilities.
    - C. Placement. The new wireless support structure shall be placed on the site to minimize its visibility from off-site-locations as much as practicable.
  - (2) Maximum Permitted Height. For a new wireless support structure, the overall height of the wireless support structure and any antennas shall not be more than forty feet in height above established grade at the base of the structure.
  - (3) Design Requirements. The Design Requirements of this Section 943.09 shall be the same as those set forth in Section 943.06(d)(3).
  - (4) Multiple requests for wireless support structures in violation of spacing requirements. If multiple requests are received by the village to install two or more poles that would violate applicable spacing requirements under Section 943.06(d)(1)C, or to collocate two or more small cell facilities on the same wireless support structure, notwithstanding division (F) of section 4939.0313 of the Revised Code, the village may resolve conflicting requests through whatever reasonable and nondiscriminatory manner it deems appropriate.
- (d) Antenna. All antenna installed in connection with a Type V wireless support structure shall conform to the requirements of Section 943.06(e).

- (e) Small Cell Facilities Installed on Type V Wireless Support Structures. All small cell facilities installed on Type V wireless support structures shall conform to the requirements of Section 943.06(f).
- (f) Ground Mounted Small Cell Facilities.
  - (1) Location. In no case shall ground mounted small cell facilities be located more than two feet from the base of the related wireless support structure.
  - (2) Size. All small cell wireless equipment associated with the facility shall not cumulatively exceed 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.
  - (3) Maximum Permitted Height. The maximum height for ground mounted small cell facilities shall not exceed 2.5 feet as measured from established grade at the base of the facility.
  - (4) Equipment Enclosures Required. All ground mounted small cell facilities shall be fully contained within enclosures or cabinets.
  - (5) Design Requirements.
    - A. Screening required. Ground mounted equipment cabinets shall be completely screened with evergreen plant material planted to ensure that the equipment will be screened to its full height within two years of planting.
    - B. Color. Ground mounted small cell facility cabinets and enclosures shall be a dark green or black powder coated finish.
- (g) Design Guidelines. The Commissioner of Buildings may promulgate detailed guidelines pertaining to small cell facilities outside the right-of-way, which design guidelines shall be provided, utilized, and updated in accordance with Section 943.06(h).

#### **943.10 RECOVERY OF COSTS; USE OF REVENUE**

- (a) Application processing fee. For processing an application for consent, the village may charge a fee for each small cell facility and wireless support structure requested as prescribed under section 4939.031 of the Revised Code and as listed on the associated application forms. The village 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 village and located in the right-of-way, the village may charge an annual fee as prescribed under 4939.031 of the Revised Code and as listed on associated application forms. The village may adjust this fee ten per cent every five years, rounded to the nearest five dollars.
- (c) No other fees required. Except for any applicable work permit under division (B) of section 4939.0311 of the Revised Code and financial surety under division (J) of section 4939.0314 of the Revised Code, the village may not charge an operator any other charge or fee for a small cell facility or associated wireless support structure except as set forth in section 4939.0316 and division (B) of section 4939.0322 of the Revised Code. The fees set forth in sections 4939.0316 and 4939.0322 of the Revised Code are not right-of-way fees.

- (d) Tax liabilities and assessments not applicable. Placement of small cell facilities in the public way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject a municipal corporation to any state or local tax liabilities or assessments.
- (e) Use of revenue. All costs recovered under this chapter shall be used to reimburse the Building Department, Village Engineer, Service Department and Village Solicitor's office for the costs incurred in responding to applications and monitoring installation and maintenance of small cell facilities and support structures in the right-of-way pursuant to this chapter.

#### **943.11 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.

#### **943.99 PENALTIES**

- (A) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach, or maintain any small cell facility or support structure in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a third degree misdemeanor each day during the period such violation continues.
- (B) If any small cell facility or support structure is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the village, in addition to other remedies, may institute in the name of the village any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such facility, and/or to prevent any illegal act, conduct, business, or use in or about such facility.
- (C) The Service Department personnel are authorized to make requests and to issue orders regarding small cell facilities in the right-of-way for the purpose of public safety and compliance with this chapter. The Service Department and/or Commissioner of Buildings are also authorized to conduct visual and external inspections of small cell facilities and support structures in the right-of-way at any time and shall make efforts to coordinate with the provider responsible for a small cell facility for any internal inspection of the relevant equipment.
- (D) Nothing herein shall prevent the village from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations.

SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, health and welfare of the inhabitants of the Village of Bratenahl by reason of the immediate necessity to enact and add Chapter 943 of the



Codified Ordinances of the Village of Bratenahl. Wherefore, this Ordinance shall be in full force and effect immediately after its passage.

PASSED:

APPROVED:

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John M. Licastro, Mayor

ATTEST:

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Thomas M. Cornhoff, Village Fiscal Officer

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 18-0888-AU-PWN**

Summary: Notice Notice Regarding Bratenahl Code Chapter 941 and Chapter 943  
electronically filed by Mr. Samuel T O'Leary on behalf of Village of Bratenahl and Matty, David  
J. Mr.