

**CITY OF PORTLAND**  
**Ionia County, Michigan**

Council Member Fitzsimmons, supported Mayor Pro-Tem VanSlambrouck, moved the adoption of the following ordinance:

**ORDINANCE NO. 199**

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF PORTLAND BY ADDING A NEW ARTICLE TITLED “SMALL WIRELESS COMMUNICATIONS FACILITIES” THAT SHALL BE DESIGNATED AS ARTICLE IV OF CHAPTER 36 “TELECOMMUNICATIONS’ OF SAID CODE**

**THE CITY OF PORTLAND ORDAINS:**

**Section 1. Addition of Article IV to Chapter 36.** Article IV “Small Wireless Communications Facilities” is added to Chapter 36. “Telecommunications” of the Code of Ordinances of the City of Portland to read as follows:

**ARTICLE IV. SMALL WIRELESS COMMUNICATIONS FACILITIES**

**“Sec. 36-97. Purpose.**

To regulate and provide a permitting process for the deployment of small wireless communications facilities in conformance with the small wireless communication facilities deployment act, Act No. 365 of the Public Acts of 2018 (the “Act”) and the FCC Declaratory Ruling and Third Report and Order entitled “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment” (the “Order”). In doing so, the City of Portland (the “authority”) wishes to ensure the reasonable and fair control and management of public rights-of-way, support new technology, avoid interference with right-of-way use, and protect the public, health, safety, and welfare.

**Sec. 36-98. Definitions.**

Unless otherwise defined by this Chapter, words shall have the meanings as set forth in the Act.

**Sec. 36-99. Rate.**

For each utility pole or wireless support structure in the ROW in the City on which a wireless provider has collocated a small cell wireless facility, the authority shall collect a rate as follows:

- (1) \$20 annually unless subdivision (2). applies

- (2) \$125 annually, if the utility pole or wireless support structure was erected by or on behalf of the wireless provider on or after the effective date of the Act. This subdivision does not apply to the replacement of a utility pole that was not designed to support small cell wireless facilities.

Every 5 years after the effective date of the Act, the rate shall be increased by 10% and rounded to the nearest dollar.

**Sec. 36-100. Undergrounding Designated Area.**

The authority shall have the power to prohibit above-ground installations in a designated area if that designated area has required undergrounded infrastructure at least 90 days before any application. In doing so, the authority shall make available to the public such designated areas and shall not prohibit replacement of existing authority poles. The authority shall also provide for a waiver process if no technically feasible structures exist in the designated area or may allow placement on other vertical structures, where available, commensurate with other structures in the area.

**Sec. 36-101. Design and Concealment Measures for Downtown Districts and Residential Zoning Districts.**

The authority may publish design and concealment measures for Downtown Districts and Residential Zoning Districts. A wireless provider must adhere to written, objective, reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures which may be published from time to time by the authority.

**Sec. 36-102. Permit Required.**

- (1) A permit is required to collocate a small wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be collocated. Applicants shall submit:
  - a. Information and documentation to enable the City to make a decision with regard to the criteria in Section 15(2)(i) of the Act.
  - b. A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.
  - c. If the proposed activity will occur within a shared ROW or a ROW that overlaps another ROW, a wireless provider shall provide to each affected authority to which an application for the activity is not submitted, notification of the wireless provider's intent to locate a small cell wireless facility with the ROW.
  - d. Proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.

The application shall be processed in compliance with the Act.

**Sec. 36-103. Spacing Requirements for Ground-Mounted Equipment and New Utility Poles.**

A wireless provider shall not place new utility pole or ground-mounted equipment within any distance of another utility pole or ground-mounted equipment that would be in violation of any applicable laws or regulations nor closer than 125 feet from another utility pole or ground mounted equipment. The authority has the ability to waive separation distance requirements if the authority finds that it is necessary so as not to be prohibitive to the deployment of wireless services.

**Sec. 36-104. Time to Completion.**

Pursuant to Section 15(2)(1) of the Act, within 1 year after a permit is granted, a wireless provider shall complete collocation of a small cell wireless facility that is to be operational for use by a wireless services provider or the permit shall be deemed void.

**Sec. 36-105. Application Fee.**

An application fee for a permit shall be:

- (1) \$200.00 for each small cell wireless facility alone.
- (2) \$300.00 for each small cell wireless facility and a new utility pole to which it will be attached.

Every 5 years after the effective date of the Act, the maximum fees shall be increased by 10% and rounded to the nearest dollar.

**Sec. 36-106. No Permit Required in Certain Instances.**

No permit, any other approval, rate, or fee shall be required for:

- (1) The replacement of a small cell wireless facility with a small cell wireless facility that is not larger or heavier, in compliance with applicable codes.
- (2) Routine maintenance of a small cell wireless facility, utility pole or wireless support structure.
- (c) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

**Sec. 36-107. Application Denial.**

An application shall be denied if the proposed activity does any of the following:

- (1) Materially interferes with the safe operation of traffic control equipment.
- (2) Materially interferes with sight lines or clear zones for transportation or pedestrians
- (3) Materially interferes with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
- (4) Materially interferes with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction the authority.
- (5) Materially interferes with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed
- (6) Not located a reasonable distance from the drainage infrastructure to ensure maintenance under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to drainage infrastructure.
- (7) Fails to comply with spacing requirements as defined in this ordinance that apply to the location of ground-mounted equipment and new utility poles
- (8) Fails to comply with applicable codes
- (9) Fails to comply with Section 13(7) or (8) of the Act
- (10) Fails to meet stealth or concealment criteria for small cell wireless facilities as defined in this ordinance or by the authority's published standards.

**Sec. 36-108. Permit Revocation.**

The authority may revoke a permit, upon 30-days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole is in such a state as to meet the criteria for Permit Denial of this ordinance.

**Sec. 36-109. Alternate Location.**

After receipt of an application to place a new utility pole, the authority may propose an alternate location within the ROW or on property or structures owned or controlled by the authority within 75 feet of the proposed location to either place the new utility pole or collocate on an existing structure. The applicant shall use the alternate location if able to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs.

**Sec. 36-110. Discontinuance.**

Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify the authority in writing. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure.

The wireless provider shall return the property to its preinstallation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this section for a small cell wireless facility expires upon removal of the small cell wireless facility.

**Sec. 36-111. Other permits.**

A wireless provider shall obtain all applicable permits for work that will unreasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.

**Sec. 36-112. Authority Poles.**

The rate for authority poles shall be \$30.00 per year per authority pole.

Every 5 years after the effective date of the Act, the rate will be increased by 10% and rounded to the nearest dollar. This rate for the collocation of small cell wireless facilities on authority poles is in addition to any rate charged for the use of the ROW.

**Sec. 36-113. Existence of Authority Pole.**

The authority is not required to install or maintain any specific authority pole or to continue to install or maintain authority poles in any location if the authority makes a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction.

**Sec. 36-114. Hold Harmless and Insurance.**

Any permit hereunder or zoning approval given shall require the wireless provider to do the following with respect to a small cell wireless facility, a wireless support structure, or a utility pole:

Defend, indemnify, and hold harmless the authority and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of these. A wireless provider has no obligation to defend, indemnify, or hold harmless an

authority or the officers, agents, or employees of the authority or governing body against any liabilities or losses due to or caused by the sole negligence of the authority.

Obtain insurance naming the authority and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, cost liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the authority's insurance coverage and limit requirement by self-insurance. To the extent it self-insures, a wireless provider is not required to name additional insureds under this section. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the authority evidence demonstrating, to the authority's satisfaction, the wireless provider's financial ability to meet the authority's insurance coverage and limit requirements.

### **Sec. 36-115. Bond Requirements.**

If deemed appropriate for a particular installation, the authority may require a bond:

- (1) For the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determines should be removed to protect public health, safety, or welfare.
- (2) To repair the ROW
- (3) To recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the authority of the noncompliance.

### **Sec. 36-116. General.**

- (1) A small cell wireless facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.
- (2) A wireless provider is responsible for arranging and paying for the electricity used to operate a small cell wireless facility.
- (3) A utility pole in the ROW installed or modified on or after the effective date of the Act shall not exceed 50 feet above ground level.
- (4) If either the Act or the Order does not become effective or becomes ineffective or is modified due to court action or otherwise, this ordinance shall conform to the court order or amendment or in the absence of the Act or Order the authority may implement reasonable procedures as the authority deems appropriate to process applications.
- (5) In addition to all remedies contained in this article and as provided for by law, a person who violates any provision of this article is responsible for a municipal

civil infraction, subject to payment of a civil fine of not less than \$500.00 and not more than \$5,000, plus costs and other sanctions, for each infraction. Each day that a violation continues shall be a separate infraction. Repeat offenses under this article shall be subject to increased fines as follows:

First repeat offense: Not less than \$1,000.00 and not more than \$10,000

Second and subsequent offense: Not less than 2,000.00 and not more than \$20,000

**Sec. 36-117-137 Reserved.**

**Yeas:** Fitzsimmons, VanSlambrouck, Baldyga, Johnston, Barnes

**Nays:** None

**Abstain:** None

**Absent:** None

**ORDINANCE DECLARED ADOPTED.**

Dated: March 18, 2019

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James E. Barnes, Mayor

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Monique I. Miller, City Clerk

Introduced: March 4, 2019

Adopted: March 18, 2019

Published: March 24, 2019

Effective: March 28, 2019

**CERTIFICATION**

I certify that this is a true and complete copy of the ordinance adopted at a regular meeting of the City Council of the City of Portland on March 18, 2019.

Dated: March 18, 2019

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Monique I. Miller, Clerk

