

**CITY OF FENTON
ORDINANCE NO. _____**

AMENDMENT TO THE CITY OF FENTON CODE OF ORDINANCES

An ordinance to amend Chapter 31.5 of the City of Fenton Code of Ordinances to secure the health, safety, and general welfare of the residents and property owners of the City of Fenton, Genesee County, Michigan, by regulating small wireless facilities within the City pursuant to the Small Wireless Communications Facilities Deployment Act, Act 365 of 2018, as amended.

THE CITY OF FENTON, GENESEE COUNTY, MICHIGAN ORDAINS:

SECTION 1. Amendment to the Fenton City Code, Chapter 31.5, Article VIII: The Fenton City Code, Chapter 31.5, Article VIII is amended to reserve Sections 31.5-127 to 31.5-130 for future use.

SECTION 2. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional division for Article IX, which shall be entitled:

ARTICLE IX. –SMALL CELL WIRELESS FACILITIES

SECTION 3. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31, is amended to add a new and additional Section 31.5-131, which shall read as follows:

Sec. 31.5-131. – Definitions.

In addition to the definitions provided in Section 31.5-3, the following definitions apply to this article. To the extent there are any inconsistencies, the more specific definitions provided in this article control over the definitions provided in section 31.5-3.

Act means the Small Wireless Communications Facilities Deployment Act, Act 365 of 2018.

Authorization means permission from the city to do work in the public way or to maintain facilities in the public way and includes but is not limited to a franchise, a license, a permit, a letter, construction drawing approval. Multiple authorizations may be required for certain activities.

Colocate means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. Colocate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

Contractor means and includes any of the following licensed entities performing work on an owner's behalf: contractor; subcontractor; or any employee or agent of a contractor, subcontractor, or owner.

Department means the City Department of Public Works.

Emergency means a condition that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair to restore service to a group of users of such service.

Emergency work means the replacement or repair of damage to active facilities, including main lines and services, where all 811 dig requirements are met.

Excavate means without limitation any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the public way.

Facilities means poles, pipes, culverts, conduits, ducts, cables, wires, fiber, amplifiers, pedestals, antennas, transmission or receiving equipment, other electronic equipment, electrical conductors, manholes, appliances, signs, pavement structures, irrigation systems, landscaping, monument signs, monument mailboxes and any other similar equipment, for public or private use.

Owner means any property owner, company owner, or any entity by which work within the right-of-way has been ordered, or any entity on behalf of which any work within the right-of-way is caused to be performed, or any agent thereof.

Person means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other organized entity able to contract for the activities described in this ordinance, whether for profit or not for profit. The term does not include the city.

Public right-of-way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. The term "public right-of-way" does not include a federal, state, or private right-of-way.

Small cell wireless facility means a wireless facility that meets both of the following requirements:

- (i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
- (ii) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: 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.

User means a person that proposes to place facilities in the public way, places such facilities, or owns or maintains such facilities. The term includes but is not limited to licensees and franchisees.

Utility pole means a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements in section 13(5) of the Act and is designed to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

Wireless facility means equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include (i) the structure or improvements on, under, or within which the equipment is colocated, (ii) a wireline backhaul facility, or (iii) coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

Wireless provider means a wireless infrastructure provider or a wireless services provider. Wireless provider does not include an investor-owned utility whose rates are regulated by the Michigan Public Service Commission (“MPSC”).

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

Wireless services provider means a person that provides wireless services.

Wireless support structure means a freestanding structure designed to support, or capable of supporting, small cell wireless facilities. Wireless support structure does not include a utility pole.

SECTION 4. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-132, which shall read as follows:

Sec. 31.5-132. – General Requirements.

- (a) No wireless providers shall occupy, wholly or in part, the streets, alleys, or public rights-of-way within the geographical boundaries of the City without first receiving a franchise and consent and permit for that purpose.
- (b) No wireless providers shall attach, alter, or modify a City-owned pole or wireless support structure without entering into a license agreement with the City.
- (c) The City may establish appropriate requirements for new franchises, licenses, and ordinance requirements consistent with state and federal law, and may modify the requirements of this article from time to time to reflect changes in the industry. The City further retains the right to make any modifications based on court rules, injunctions, or statutory amendments addressing the federal and state law mandates requiring the City to provide this process under its current regulations. The City further reserves any constitutional or statutory challenges it may have under federal and state law to the process mandated, despite its efforts to comply such changes in the law.
- (d) Notwithstanding any other provisions of this article to the contrary, a wireless provider shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law

or regulation shall require a wireless provider to perform any service, or shall permit a provider to perform any service, or shall prohibit a wireless provider from performing any service, in conflict with the terms of this article or resulting franchise or of any law or regulation of the City, then as soon as possible following knowledge thereof, a wireless provider shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City or any applicable franchise.

- (e) Subject to this article, wireless providers may occupy and use the public right-of-way to colocate small cell wireless facilities to provide wireless services upon, along, over and under the public right-of-way in the city such that such collocations do not inhibit other utility installations within the public right-of-way.
- (f) The city retains its right to impose fees and compensation consistent with federal and state law.
- (g) Wireless providers shall pay taxes for telecommunications services that are subject to taxation.
- (h) Use of the public right-of-way is allowed only to the extent the city itself possesses such rights.
- (i) Wireless providers shall obtain approvals legally necessary to use the public right-of-way from owners, other than the city, of property interests in the public right-of-way or adjacent to the roadway system located within the city. To the extent any wireless provider obtains approval through a statutory authorization, as opposed to review and approval by the City, the wireless provider's placement or location of any small cell wireless facility, wireless facility, and utility pole within the City's public right-of-way shall comply the general and specific design and location requirements of this article.
- (j) No wireless provider shall have the exclusive right or privilege to occupy or use the public right-of-way for delivery of wireless services or any other purpose.
- (k) The city reserves all rights to use the public right-of-way for any purpose not prohibited by law, including the provision of wireless services, and all rights to grant authorizations to any other person(s), including any wireless provider, to use the public right-of-way.
- (l) Wireless providers shall have no right, title, or interest in the public right-of-way, and any franchise, consent, permit, or license provided by the city provides not right, title or interest to occupy any space outside of the public right-of-way or any private property not owned by the city.
- (m) Wireless providers use of the public right-of-way shall not divest the city of any interest in the public right-of-way.

- (n) The city does not warrant its legal interest in the public right-of-way.
- (o) Nothing in this section shall be deemed or construed to stop or limit the city from exercising any regulatory, police, governmental, or legislative function pursuant to applicable law, which powers include, but are not limited to, the authority to enact regulations, ordinances, rules, and orders not prohibited by state or federal law that affect the public right-of-way or a wireless provider's use of the public right-of-way.
- (p) The terms of this section do not permit the wireless provider to operate a cable system or to provide cable service, as those terms are defined by Section 602 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Section 522), or install any wires or facilities that are required to be permitted under the METRO Act, Public Act 48 of 2002, MCL 484.310.
- (q) This article only permits the wireless provider, upon obtaining required approvals and permits, to place its small cell wireless facilities in those portions of the public right-of-way approved by the city.
- (r) Under no circumstances shall any wireless provider be permitted to place small cell wireless facilities on any building that is on the National Register of Historic Places, pursuant to 47 C.F.R. § 1.1307(a)(4).
- (s) Collocation of small cell wireless facilities shall commence within six months of permit issuance and shall be activated for use no later than one year from the permit issuance date. Failure to commence collocation within six months of permit issuance shall void said permit. A small cell wireless facility not activated within one year of permit issuance shall be considered abandoned and shall be removed from the public right-of-way at the wireless provider's sole expense.
- (t) A wireless provider shall notify the city in writing of the location and date that any wireless facility located in the city whose use will be discontinued. If the use of the facility is discontinued for 180 days without notice from the owner/operator or the owner of the property or other information indicates that the facility is not in use, the City may declare the facility abandoned. The City will provide notice and provide the wireless provider an opportunity to show cause before the City Manager as to why the wireless facility should not be removed. Following determination of the City Manager, the city may take the necessary steps to remove the facilities from the City's right-of-way.

SECTION 5. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-133, which shall read as follows:

Sec. 31.5-133. – Permit Required.

- (a) *Permit Requirement.* Except as otherwise provided in the Act, a wireless services provider seeking to use public rights-of-way in the city for its small cell wireless facilities shall apply for and obtain a permit pursuant to this article.
- (b) *Limitations on Facilities in Application.* No more than 20 small cell wireless facilities may be included in a single permit application.
- (c) *Application.* A wireless provider shall apply for a permit on an application form made available by the city clerk. A wireless provider shall file one copy of the application with the city clerk, one copy with the city manager, one copy with the department, and one copy with the city attorney. Applications shall be complete and include all required information. An application is not considered complete until all required materials have been submitted and accepted by the city. At a minimum, the applications shall require submission of the following:
 - a. Applicant contact information, including an address, phone contact, twenty-four-hour emergency contact information, e-mail address, and any applicable license numbers;
 - b. Applicant’s contractor and subcontractor information, including the names, addresses, phone contact, e-mail addresses, emergency contact numbers, and name of the supervisor(s) assigned to any facility project of all contractors or subcontractors that will work within the City’s rights-of-way under a permit;
 - c. Number of wireless facilities that will be deployed;
 - d. The scope of the deployment, including whether the deployment is modification of a current facility or utility pole, collocation on an existing pole or structure, or installation of a new or replacement structure or pole;
 - e. GIS maps and coordinates detailing locations for each proposed attachment and related facilities associated with each attachment;
 - f. A coverage map showing the projected coverage areas of existing and proposed small cell wireless facilities;
 - g. Site plan at a scale not smaller than one-inch equals twenty feet with dimensions showing the following:
 - i. Proposed location within the right-of-way including nearest cross street intersection;

- ii. Parcel identification number and property ownership for parcels located within 75 feet of the proposed facility;
 - iii. Height of the proposed facility;
 - iv. The distance of the proposed facilities and the nearest property line, roadways, rights-of-way, and utilities within the rights-of-way; and
 - v. Any other proposed improvements that are part of the deployment;
- h. An application fee as established by the City Council;
 - i. Executed franchise, license and consent agreement for access to and use of the City's rights-of-way;
 - j. Specification sheets for all attachments and equipment that will be located within the City, including the dimensional size of the small cell wireless facility and all other wireless equipment;
 - k. Attachment drawings and demonstrations of each type of installation, including photograph simulations showing collocations, new or replacement poles, and concealment and design characteristics satisfying this article;
 - l. Pole loading analysis if being colocated on a city pole or structure;
 - m. Attestation that the small cell wireless facilities will be operational for use by a wireless services provider within one (1) year after the permit issuance date;
 - n. Work plan describing the location of the proposed work, the work to be performed, the limits of disturbance to the public right-of-way and the method and materials to be used;
 - o. Landscape plans for ground-mounted facilities, if applicable;
 - p. Site/structure remediation plans for restoring the public right-of-way after removal of the wireless facilities;
 - q. Certificate of compliance with FCC radio frequency emission regulations;
 - r. For all new poles, replacement poles, and wireless structures, demonstration of compliance with ANSI/TIA 222-G-2 standards;

- s. For all new poles, replacement poles, and wireless support structures, a certification by the wireless provider and a structural analysis sealed by a licensed engineer attesting that the towers and structures will accommodate collocation of additional antennas, including the extent of such collocation space;
 - t. For all new poles, replacement poles, and wireless support structures, a statement from a licensed engineer why no current existing towers or structures are adequate to provide the services planned with the wireless facility;
 - u. An inventory of any existing and approved small cell wireless facilities, poles, and wireless support structures that are within the jurisdiction of the City;
 - v. Copy of all other permits related to the deployment, including any applicable METRO Act application and permit;
 - w. For deployments in downtown or residential districts, documentation of compliance with design and location requirements;
 - x. Documentation showing adequate insurance, including the City named as an additional insured;
 - y. A performance bond meeting the requirements of this Article; and
 - z. Any additional information requested by the City.
- (d) *Confidential information.* If a wireless provider claims that any portion of the information submitted by it as part of its application contains trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act (MCL 15.231 et seq.), the wireless provider shall prominently so indicate on the application.
- (e) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time nonrefundable application fee in the amount as established by City Council.
- (f) *Permit Approval Process.* Permit applications shall comply with the following process.
- a. *Pre-Meeting.* Prior to submission of an application, a wireless provider shall meet with the City to discuss the application process, a wireless provider's intended deployment, and the requirements of this article.
 - b. *Submission.* After the pre-meeting is conducted, the wireless provider may file the application, including all required documents, fees and information.

- c. *Initial Review for Completeness.* Submitted applications will first be reviewed for completeness to ensure that all required information is included. If an application is deemed incomplete, the City will provide written notice to the wireless provider which clearly delineates all missing documents or information. Any applicable statutory review times will be tolled from the time the City notifies the wireless provider that the application is incomplete until a supplemental submission is received.
 - d. *Review by City Staff.* Once an application is deemed complete, it will be reviewed by the City Manager, the City Department of Public Works, the City Building Official, the Chairperson of the Downtown Development Authority, the City Attorney and any other designees of the City Manager.
 - e. *Post-application Meeting.* If review by the City raises any issues or concerns, meetings with the wireless provider and relevant members of the City staff may be requested.
 - f. *Final Approval.* Upon the conclusion of the City's review, the City Council will review the application and any recommendations from City staff. If the City Council is satisfied that all the requirements of this article are satisfied, it will approve the application. The wireless provider is requested to attend this meeting.
 - g. *Issuance of Permit.* Once an application is approved by the City Council, the City Department of Public Works shall issue a permit granting wireless provider access to and use of the public rights-of-way.
 - h. *Notice of Completion.* Wireless provider will notify the City within 48 hours after completing the work allowed by the permit.
 - i. *Final Inspection.* Within 30 days after receiving notice that the wireless provider has completed the work under the permit, the City will inspect the wireless provider's facilities and make a written report as to the satisfaction of the permit, the City Code, any applicable agreements and state and federal law.
- (g) *Timeline for Review.* Applications will be processed consistent with the following timelines:
- a. *Collocation Requests.* Applications requesting to collocate small cell wireless facilities on poles located within the public right-of-way will be approved or denied within 60 days after the date the application is submitted, subject to the following:
 - i. The City will determine whether the application is complete within 25 days after the application is submitted. The City will provide written notice to the wireless provider if the application is deemed incomplete and a supplemental response is required.

- ii. If a supplemental response is required, the City's deadline for approving or denying the application will be tolled by however many days it takes for the wireless provider to submit a supplemental response to the City after receiving notice that the wireless provider's application was incomplete. The City will notify the wireless provider whether the application remains incomplete within 10 days of receiving a supplemental response. If more than one supplemental response is required, the deadline for approving or denying the application will continue to be tolled by the number of days between the City providing notice to the wireless provider and the City receiving a supplemental submission.
 - iii. The City may add 15 days to the deadline for approving or denying the application if another wireless provider also submitted an application within 7 days of the date of the submission of the application in question.
 - iv. The City may extend the deadline for approving or denying the application by an additional 15 days if the City notifies the wireless provider in writing that an extension is needed and the reasons for the extension.
 - v. If the City denies a completed application, it will provide written notice explaining the reason for denial. The wireless provider may cure the identified deficiencies and resubmit its application within 30 days after the denial without paying an additional fee. The City will approve or deny the revised application within 30 days after receiving the revised application.
 - vi. The deadline for approving or denying the application may be extended by mutual agreement between the City and the wireless provider.
- b. *Requests to Install a New or Replacement Utility Pole:* Applications requesting to install a new or replacement utility pole and associated small cell wireless facility within the public right of way will be approved or denied within 90 days after the date the application is submitted. The City will determine whether the application is complete, deny the application, and review and consider a revised application as provided for collocation requests.
- c. *Requests to Install Facilities Outside the ROW, New or Replacement Wireless Support Structures Within the ROW or to Modify Wireless Support Structures.* Applications to install or modify small cell wireless facilities outside of the public right-of-way, application to install new or replacement wireless support structures within the public right-of-way, and applications to install or modify wireless support structures to be used for small cell wireless facilities will be approved or denied within 90 days after the date the application is submitted, subject to the following:
 - i. The City will determine whether the application is complete within 30 days after the application is submitted. The City will provide written notice to

the wireless provider if the application is deemed incomplete and a supplemental response is required.

- ii. If a supplemental response is required, the City's deadline for approving or denying the application will be tolled by however many days it takes for the wireless provider to submit a supplemental response to the City after receiving notice that the wireless provider's application was incomplete. The City will notify the wireless provider whether the application remains incomplete within 10 days of receiving a supplemental response. If more than one supplemental response is required, the deadline for approving or denying the application will continue to be tolled by the number of days between the City providing notice to the wireless provider and the City receiving a supplemental submission.
- iii. The deadline for approving or denying the application may be extended by mutual agreement between the City and the wireless provider.

d. *Requests to Install New Wireless Support Structures Outside of the ROW.* Applications to install or construct new wireless support structures outside of the public right-of-way to be used for small cell wireless facilities will be approved or denied within 150 days after the date the application is submitted, subject to the following:

- i. The City will determine whether the application is complete within 30 days after the application is submitted. The City will provide written notice to the wireless provider if the application is deemed incomplete and a supplemental response is required.
- ii. If a supplemental response is required, the City's deadline for approving or denying the application will be tolled by however many days it takes for the wireless provider to submit a supplemental response to the City after receiving notice that the wireless provider's application was incomplete. The City will notify the wireless provider whether the application remains incomplete within 10 days of receiving a supplemental response. If more than one supplemental response is required, the deadline for approving or denying the application will continue to be tolled by the number of days between the City providing notice to the wireless provider and the City receiving a supplemental submission.
- iii. The deadline for approving or denying the application may be extended by mutual agreement between the City and the wireless provider.

(h) *Standards for Review of Application.* The city may grant or deny the location and installation of any small wireless facility, pole, or wireless support structure prior to installation, if installation would:

- a. Materially interfere with the safe operation of traffic control equipment.
- b. Materially interfere with sight lines or clear zones for transportation or pedestrians.
- c. Materially interfere 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.
- d. Materially interfere with or endanger the use of City bike paths, walkways, parks, or recreational areas used by City residents.
- e. Materially interfere with maintenance or full unobstructed use of the City's public utility infrastructure.
- f. Materially interfere with maintenance or full unobstructed use of the City's drainage infrastructure as it was originally designed, or not be located a reasonable distance from the drainage infrastructure to ensure maintenance.
- g. Fail to comply with spacing requirements as set forth in this article.
- h. Fail to comply with applicable codes.
- i. Fail to comply with design and concealment requirements as set forth in this article.

SECTION 6. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-134, which shall read as follows:

Sec. 31.5-134. –General Design and Location Requirements.

Small cell wireless facilities, related equipment and accessories, poles and wireless support structures shall comply with the following design and concealment standards:

- (a) *Compatible Design.* All small cell wireless facilities and related equipment must use materials, colors, textures, and screening so as to be aesthetically and architecturally compatible with the surrounding environment, including:
 - (1) Be compatible in design to match existing street lights, traffic control devices, poles, infrastructure, outside furniture, garbage receptacles, and adjacent buildings.
 - (2) Be aesthetically pleasing.

- (3) Be the similar in color to existing architecture and adjacent infrastructure.
- (b) *Lighting.* Facilities shall not be artificially lighted. If lighting is required, the lighting fixtures and installation must cause the least disturbance to surrounding properties.
- (c) *Collocation.* Unless physically or technically infeasible, all wireless facilities shall be constructed to accommodate two or more users. Any wireless provider must openly allow another provider to colocate upon its wireless facility under rates and conditions that are acceptable within the industry to promote collocation. Collocation of small cell wireless facilities is strongly encouraged.
- (d) *Ancillary Facility Equipment.* All other wireless equipment with the facility shall be designed and painted to satisfy this section. The equipment will be required by the City to be located underground in any locations where the equipment will be visible from adjacent roadways and lots and public electrical utility lines are already placed underground. Where underground placement of equipment is not required or would impair service, aboveground placement is permitted upon the City's approval. Ground-mounted equipment shall comply with the following requirements:
- (1) All equipment shall be completely concealed from view within an enclosed cabinet. Cabinets must be compatible in color and design to match existing infrastructure and architecture.
 - (2) So as not to impede or impair public safety or the legal use of the public right-of-way by the traveling public, in no case shall ground-mounted equipment be located closer than two feet from the public right-of-way, edge line, face of curb, sidewalk, bike lane or shared-use path.
 - (3) Ground-mounted equipment shall be located a minimum of 12 feet from any permanent object or existing lawful encroachment in the public right-of-way to allow for access.
 - (4) Ground-mounted equipment must be secured to a concrete foundation or slab with a breakaway design in the event of collisions.
 - (5) Ground-mounted equipment must either be screened with plant material that is consistent with the characteristics of the surrounding area, be integrated into the base of an existing utility pole, wireless support structure or other infrastructure, or be otherwise camouflaged so as to be aesthetically and architecturally compatible with surrounding environment, without detracting from the streetscape. The City and the wireless provider shall agree on mutually acceptable design criteria prior to any aboveground deployment.

- (e) *Separation Distances.* New utility poles and ground-mounted equipment shall be installed at least 300 feet from any existing or proposed utility pole or ground-mounted equipment. Any wireless provider desiring to install poles less than 300 feet apart shall demonstrate to the City's satisfaction that the wireless provider could not serve a location without the desired placement.
- (f) *Marking and Signage.* No small cell wireless facility, utility pole, wireless support structure or any portion thereof shall have any signage except as expressly permitted by this article or as required by state or federal law. Aerial portions of small cell wireless facilities shall be marked with a marker which shall state wireless provider's name and provide a toll-free number to call for assistance. Underground portions of small cell wireless facilities shall have a stake or other appropriate above ground markers with wireless provider's name and a toll-free number indicating that there is buried equipment below. Any marking required by this section shall not be used for advertising purposes and shall not exceed 1 square foot in area unless approved by the City.

SECTION 7. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-135, which shall read as follows:

Sec. 31.5-135. –Design and Location Requirements for Deployments on Existing Poles.

Small cell wireless facilities installed on existing utility, street light, traffic signal poles, or wireless support structures located in residential and downtown districts shall comply with the following design and concealment standards:

- (a) The maximum pole height shall be 40 feet.
- (b) They shall be aesthetically pleasing, similar in design to existing infrastructure and architecture, consistent with the local character of the area and shall not detract from the streetscape.
- (c) To the extent practicable, all accessory cables and equipment shall be installed underground.
 - (1) If any equipment cannot be installed underground, then it shall be installed at the base of the pole and concealed with skirting compatible in design and color to the pole.
- (d) Antenna shall be installed within the pole and not visible. If any antenna cannot be installed within the pole and made not visible, then it shall extend vertically from the pole or be flush-mounted to the side of the pole and shall be designed to be an architecturally compatible extension of the pole. The diameter of the antenna shall be consistent with the diameter of the pole, not including other appurtenances or extensions from the pole, or the base to which the pole is mounted. The antenna shall not extend more than ten feet above the top of the pole.

SECTION 8. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-136, which shall read as follows:

Sec. 31.5-136. – Design and Location Requirements for Deployments Requiring New Poles.

Small cell wireless facilities requiring the installation of a new pole or wireless support structure in residential, historic, and downtown districts shall comply with the following design and concealment standards:

- (a) If possible, poles and wireless support structures shall be designed to accommodate small cell wireless facilities for multiple wireless services providers.
- (b) Poles shall be located a minimum of 15 feet from any tree, measured to the tree-trunk center. Additionally, 80 percent of the root protection zone shall remain undisturbed. The root protection zone shall either be a six-foot radius around the tree or a one-foot radius for every inch of tree diameter at breast height, whichever is greater. This minimum separation shall not apply for a new pole that replaces an existing pole, where the new pole is installed in the same place as, or immediate vicinity of, the existing pole.
- (c) Poles shall be designed pursuant to city standards or the applicable utility's standard, and function as street light poles, utility poles, or traffic signal poles in consultation with the city or the applicable utility and shall be incorporated into the applicable utility or signaling system.
- (d) Poles shall comply with the following height regulations:
 - (1) In residential districts, poles shall not exceed 33 feet in height from ground level.
 - (2) In downtown districts, poles shall not exceed 10% of an adjacent building or exceed 40 feet in height from ground level, whichever is less.
 - (3) In all other districts, poles shall not exceed 40 feet in height from ground level.
- (e) Poles shall be designed and installed with materials and appearance consistent with existing poles in the adjacent public way, unless materials and appearance are prescribed by other ordinance, law, or City requirements. Poles shall be aesthetically pleasing, consistent with the local character of the area and shall not detract from the streetscape.
- (f) Antenna shall be installed within the pole and not visible. If any antenna cannot be installed within the pole and made not visible, then it shall extend vertically from the pole or be flush-mounted to the side of the pole and shall be designed to be an architecturally compatible extension of the pole. The diameter of the antenna shall be consistent with the diameter of the pole, not including other appurtenances or extensions from the pole, or the base to which the pole is mounted. The antenna shall not extend more than five feet above the top of the pole.
- (g) To the extent practicable, all accessory cables and equipment shall be installed within the pole or placed underground as required by this article.

SECTION 9. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-137, which shall read as follows:

Sec. 31.5-137. – Insurance and Bonding Requirements

- (a) *Insurance.* The wireless provider shall furnish proof of insurance in an amount and form satisfactory to the City, naming the City as an additional insured. Such insurance shall cover a period of not less than the term of this permit and shall provide that it cannot be cancelled without thirty (30) days advance written notice to the City.
- (b) *Bonding.* Before any work under a permit issued pursuant to this Article may commence, a wireless provider shall furnish to the City a performance bond in the form of an irrevocable bank letter of credit form or surety bond form approved by City, in the amount of \$1,000.00 per small cell wireless facility included in the application for a permit, to provide for the reasonable costs of removal of abandoned or improperly maintained small cell wireless facilities, to repair the ROW or to recoup unpaid rates or fees.

SECTION 10. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-138, which shall read as follows:

Sec. 31.5-138. – Assignment; Speculation

- (a) *Assignment; Transfer.* No permit may be transferred or assigned by a wireless provider without the City's express written permission until the construction and installation of all permitted small cell wireless facilities is completed. After completion of such construction, wireless provider must provide notice to the City no later than thirty (30) days after any assignment or transfer, provided that the transferee or assignee:
 - (1) Is qualified to perform under the terms of this Article, the permit issued by the City and any applicable agreement with the City, and shall be subject to the obligations set forth in the same;
 - (2) Supplies the City with all relevant information required by this Article, the permit issued by the City and any applicable agreement with the City; and
 - (3) Complies with any updated insurance and bond requirements deemed reasonably necessary by the City.
- (b) *Speculation.* Any permit obtained pursuant to this Article shall not be held for speculative purposes.

SECTION 11. Amendment to the Fenton City Code, Chapter 31.5: The Fenton City Code, Chapter 31.5, is amended to add a new and additional Section 31.5-139, which shall read as follows:

Sec. 31.5-139. – Revocation of Permit; Removal

(a) *Revocation of Permit.* A permit to install small cell wireless facilities issued pursuant to this Article shall be revoked upon the occurrence of any of the following events:

- (1) The wireless provider does not commence construction of the permitted small cell wireless facilities six (6) months after the date of issuance;
- (2) The permitted small cell wireless facilities are not operational within one (1) year after the date of issuance;
- (3) The wireless provider or the permitted small cell wireless facilities violate the terms or conditions of this Article, any applicable agreement with the City, any permit issued by the City, applicable codes or any relevant provision of state or federal law, and such violations are not corrected within thirty (30) days after receiving written notice from the City;
- (4) After the permitted small cell wireless facilities become operational, the wireless provider discontinues the use of the small cell wireless facilities for a period of one hundred and eighty (180) consecutive days;
- (5) The wireless provider fails to renew the permit, or the permit otherwise expires by its own terms; or
- (6) The wireless provider voluntarily requests that a permit be terminated.

These deadlines may be extended only with express written permission from the City. If small cell wireless facilities, utility poles or wireless support structures are installed prior to the revocation of a permit, the wireless provider shall comply with the procedures for removal in the following Section.

(b) *Removal of Facilities; Restoration.*

- (1) A wireless provider shall remove all small cell wireless facilities, utility poles and wireless support structures, and shall restore the public right-of-way to its preinstallation condition within forty-five (45) days after receiving written notice from the City that a permit issued pursuant to this Article has been revoked.
- (2) If the wireless provider does not complete removal and restoration within forty-five (45) days after receiving such notice, the City shall have the right, but not the obligation, to complete the removal and restoration and assess the costs and expenses against the wireless provider, including, without limitation, any administrative costs.
- (3) If the City exercises its right to effectuate removal and restoration, the wireless provider shall pay to the City the costs and expenses incurred by the City in performing any removal work and any storage of the wireless provider's property after removal (including any portion of the small cell wireless facilities) within fifteen (15) business days of the date of a written demand for this payment from the City. The City may, in its discretion, obtain reimbursement for the above by making a claim under the wireless provider's performance bond. After the City receives the reimbursement payment from the wireless provider for the removal work

performed by the City, the City shall promptly return to the wireless provider the property belonging to the wireless provider and removed by the City pursuant to this Section at no liability to the City. If the City does not receive the reimbursement payment from the wireless provider within such fifteen (15) business days, or if City does not elect to remove such items at the City's cost after the wireless provider's failure to so remove prior to forty-five (45) days subsequent to the issuance of notice pursuant to this Section, any items of the wireless provider's property, including without limitation the small cell wireless facilities, remaining on or about the public right-of-way or stored by the City after the City's removal thereof may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner allowed by law, and in accordance with any legal rights of persons other than the City who own utility poles located in the public right-of-way and used by the wireless provider. Alternatively, the City may elect to take title to such abandoned property, regardless of whether the City is provided an instrument satisfactory to the City transferring to the City the ownership of such property.

(4) The deadline for removal and restoration may be extended only with express written permission from the City.

SECTION 9. Repeal: Any and all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 10. Severability: The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION 11. Effective Date: This Ordinance shall become effective upon publication of a notice in a newspaper circulated in the City, stating the date of the enactment and the effective date of the ordinance, a brief notice as to the subject matter of this ordinance, and such other facts as the City Clerk shall deem pertinent and that a copy of the ordinance is available for public use and inspection at the office of the City Clerk.

At a regular meeting of the City Council held on the _____ day of _____, 2019, it was moved by _____ and supported by _____ that this Ordinance No. _____ be adopted. Motion _____.

Sue Osborn, Mayor

Sue Walsh, City Clerk

Certification

I, Sue Walsh, City Clerk of the City of Fenton, hereby certify this to be a true and complete copy of Ordinance No. _____, duly adopted at a regular meeting of the City Council held on the _____ day of _____, 2019.

Sue Walsh, City Clerk