BRUNSWICK CITY
PLANNING & ZONING COMMITTEE

Agenda

SEPTEMBER 23, 2019
6:40 PM
In Caucus Room
or immediately following the Finance Committee Meeting

1. Discussion Items

   (a) **ORD. NO. 60-19** - An ordinance rezoning PPN 003-18B-40-118 From The I-L Light Industrial District to the C-H Highway Interchange Commercial District. - **1st Reading** (To be brought from Planning & Zoning Committee, *Administration/Grant Aungst*)

   (b) **ORD. NO. 61-19** - An emergency ordinance establishing Chapter 1054 of the Codified Ordinances of the City of Brunswick titled "Use of Public Ways for Small Cell Facilities and Wireless Support Structures". **1st reading** (To be brought from Planning & Zoning Committee, *Administration/Ken Fisher*)

   (c) **ORD. NO. 62-19** - An emergency ordinance establishing Chapter 1056 of the Codified Ordinances of the City of Brunswick titled "Small Cell Facility Design Guidelines". - **1st Reading** (To be brought from Planning & Zoning Committee, *Administration/Ken Fisher*)

2. General Discussion

3. Adjournment

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION

DATE: 9/23/2019

TO: Vice Mayor Michael Abella Jr. and Members of City Council

FROM: Carl S. DeForest, City Manager
Grant Aungst

COPY: Mayor Ron Falconi

LEGISLATION: **ORD. NO. 60-19** - An ordinance rezoning PPN 003-18B-40-118 From The I-L Light Industrial District to the C-H Highway Interchange Commercial District. - **1st Reading** (To be brought from Planning & Zoning Committee, *Administration/Grant Aungst*)

BACKGROUND: The Brunswick City Planning Commission held a public hearing on September 5, 2019 and recommended approval to City Council to rezone the property located at 1240 Industrial Parkway North, Brunswick, Ohio from the existing I-L Light Industrial District to the C-H Highway Interchange Commercial District, subject to certain conditions. The rezoning will be consistent with the C-H District zoning of the adjacent property to the south at 1244 Industrial Parkway North.

PURPOSE AND EXPLANATION: The Planning Commission recommended approval to City Council of the rezoning of 1240 Industrial Parkway North to the C-H District, subject to the condition that the asphalt grindings on the site shall be sealed with either asphalt or concrete by December 31, 2019, as per Exhibit "A".

IMPLEMENTATION SCHEDULE: Immediately

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

One Reading	No
Two Readings	No
Three Readings	Yes
Emergency	No
Suspension of Rules	No

If emergency or suspension of the rules, why the request?
Recommend adoption.

ADDITIONAL INFORMATION:

MAYOR
RON FALCONI

CITY OF BRUNSWICK

COUNCIL
MICHAEL J. ABELLA, JR
ANTHONY P. CAPRETTA
JOSEPH P. DELSANTER
NICHOLAS HANEK
PATRICIA HANEK
BRIAN K. OUSLEY
ANDREA L. RODRIGUEZ

CITY MANAGER / SAFETY DIRECTOR
CARL S. DEFOREST

September 6, 2019

John Mayer
Herris Properties
151 Lou Groza Boulevard
Berea, OH 44017

RE: Herris Properties rezoning from I-L District to C-H District
1240 Industrial Parkway North, Brunswick, Ohio

Dear Mr. Mayer:

The Brunswick City Planning Commission, at their meeting on September 5, 2019, voted to **recommend approval** to City Council to rezone the property located at 1240 Industrial Parkway North, Brunswick, Ohio, from the current I-L Light Industrial District to the proposed C-H Highway Interchange Commercial District, subject to the following:

1. The asphalt grindings on the site shall be sealed with either asphalt or concrete by December 31, 2019.

2. Pursuant to Section 6.02(c)(6) of the Codified Ordinances of the City of Brunswick, City Council approval is required for the above rezoning. The first of three readings is scheduled for Council's meeting on September 23, 2019. Please contact Fijabi Gallam, Clerk of Council, at (330) 558-6845 for the meeting time.

If you have any questions, please contact me at (330) 558-6865.

Sincerely,

Pamela Plavecski,
Planning & Zoning Coordinator

c: Carl DeForest, City Manager
Ken Fisher, Law Director
Grant Aungst, Community & Economic Dev. Director
Matt Jones, Consulting City Engineer
Cliff Calaway, Chief Building Official

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CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 60-19

BY: Mr. Delsanter, Mr. Hanek and Mrs. Rodriguez

AN ORDINANCE REZONING PPN 003-18B-40-118 FROM THE I-L LIGHT INDUSTRIAL DISTRICT TO THE C-H HIGHWAY INTERCHANGE COMMERCIAL DISTRICT

WHEREAS: Upon application of the property owner to rezone the property known as PPN 003-18B-40-118 from the I-L Light Industrial District to the C-H Highway Interchange Commercial District, on September 5, 2019, the Planning Commission held a public hearing on the requested rezoning; and

WHEREAS: On September 5, 2019, the Planning Commission voted to recommend approval to City Council of the proposed rezoning of the property known as PPN 003-18B-40-118 from the I-L Light Industrial District to the C-H Highway Interchange Commercial District subject to the condition that the asphalt grindings on the site be sealed with either asphalt or concrete by December 31, 2019.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That upon application of the property owner, the property known as PPN 003-18B-40-118 is hereby rezoned from the I-L Light Industrial District to the C-H Highway Interchange Commercial District subject to the condition that the asphalt grindings on the site be sealed with either asphalt or concrete by December 31, 2019.

SECTION 2: Upon the effective date of this Ordinance and confirmation of completion of the condition imposed by the Planning Commission, the City Engineer shall cause the Official Zoning Map of the City of Brunswick to be revised to reflect such rezoning.

SECTION 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1st Reading_____

2nd Reading_____

3rd Reading_____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Fijabi Julien-Gallam, CMC

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION

DATE: 9/23/2019

TO: Vice Mayor Michael Abella Jr. and Members of City Council

FROM: Carl S. DeForest, City Manager
Grant Aungst

COPY: Mayor Ron Falconi

LEGISLATION: **ORD. NO. 61-19** - An emergency ordinance establishing Chapter 1054 of the Codified Ordinances of the City of Brunswick titled "Use of Public Ways for Small Cell Facilities and Wireless Support Structures". **1st reading** (To be brought from Planning & Zoning Committee, *Administration/Ken Fisher*)

BACKGROUND: Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 regarding municipalities authority to regulate installation of Small Cell Facilities, provision addressing fees from local governments, enforcement of Design Guidelines applicable to Small Cell Facilities, and the Federal Communications Commission(FCC) adopted Declaratory Ruling and Order known as the "Small Cell Order", establishing regulations applying to Small Cell Facilities consistent with Ohio Revised Code Chapter 4939 and the FCC's Small Cell Order.

PURPOSE AND EXPLANATION:

(1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City's Right-of-Way to protect the health, safety, and welfare of the citizens of the City;
(2) Preserve the character of the City, including the City's neighborhoods, downtown, other business districts and historic districts and to protect property values;
(3) Give guidance to wireless telecommunication providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures;
(4) To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable law; and
(5) Facilitate deployment of Small Cell Facilities and advanced wireless communications within the City in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.

IMPLEMENTATION SCHEDULE: Immediately upon passage.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

One Reading	Yes
Two Readings	No
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?
It is necessary to have this in place so the City may enforce and comply with HB 478 in a timely manner.

ADDITIONAL INFORMATION:

CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 61-19

BY: Mr. Delsanter, Mr. Hanek and Mrs. Rodriguez

AN EMERGENCY ORDINANCE ESTABLISHING CHAPTER 1054 OF THE CODIFIED ORDINANCES OF THE CITY OF BRUNSWICK TITLED "USE OF PUBLIC WAYS FOR SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES".

WHEREAS: Substitute House Bill 478 (Sub. H.B. 478) took effect on August 1, 2018;

WHEREAS: Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 with regard to the authority of municipalities to regulate the installation of Small Cell Facilities in the public Right-of-Way, including on utility poles, traffic signals, and street lights, municipally owned facilities, and to construct, maintain, modify, operate, or replace Wireless Support Structures in the public Right-of-Way;

WHEREAS: Sub. H.B. 478 contained provisions addressing the fees that local governments could charge to Facilities Operators for applications to install Small Cell Facilities in the public Right-of-Way and for attachment of Small Cell Facilities to municipally owned Wireless Support Structures, which fee amount resulted from extensive discussion involving municipalities, the Ohio Municipal League, and wireless service providers including AT&T, Verizon Wireless and Sprint, and many comments and suggestions from electric utilities, cable television providers, and additional Small Cell Facility owners and operators who supported the fee provisions as reasonable and acceptable;

WHEREAS: Sub. H.B. 478 also revised Ohio Revised Code Chapter 4939 to authorize municipalities to adopt and enforce Design Guidelines applicable to Small Cell Facilities, provided that the guidelines must be reasonable, and written, and based upon objective criteria regarding: (1) the location of ground-mounted Small Cell Facilities; (2) the location of Small Cell Facilities on a pole; (3) the appearance and concealment of Small Cell Facilities; and (4) the design and appearance of Wireless Support Structures, including heights limitations otherwise consistent with the Statute;

WHEREAS: On September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Order known as the "Small Cell Order," that limits and revises state and local authority to manage and regulate certain Small Cell Facilities within public Rights-of-Way nationwide, including local fees associated with such management and regulation, as well as the extent to which such regulations may deal with local aesthetic concerns, and preempts inconsistent

state and local regulations;

WHEREAS: The FCC in December 2018 denied local government-filed motions to stay the effective date of the Small Cell Order, which has been challenged in Court, such that the Small Cell Order took effect on January 14, 2019; and

WHEREAS: This Council desires to establish regulations applying to Small Cell Facilities, new Wireless Support Structures, and the persons and entities who desire to construct, operate and maintain such Facilities in the City to lawfully exercise municipal authority on this subject in a manner that is consistent with Ohio Revised Code Chapter 4939 and the FCC's Small Cell Order.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That Chapter 1054 of the City of Brunswick Codified Ordinances titled "Use of Public Ways for Small Cell Facilities and Wireless Support Structures" is hereby established to read as follows:

"1054.01 OVERVIEW AND PURPOSE; DEFINITIONS.

(a) The purpose of this Chapter is to:

(1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City's Right-of-Way to protect the health, safety, and welfare of the citizens of the City;

(2) Preserve the character of the City, including the City's neighborhoods, downtown, other business districts and historic districts and to protect property values;

(3) Give guidance to wireless telecommunication providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures;

(4) To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable law; and

(5) Facilitate deployment of Small Cell Facilities and advanced wireless communications within the City in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.

(b) For purposes of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) "Applicant" means any person or entity who submits an Application pursuant to this Chapter.

(2) "Application" means the form issued by the Chief Building Official to be

submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.

(3) "Accessory Equipment" means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.

(4) "City" means the City of Brunswick.

(5) "Collocation" or "Collocate" means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.

(6) "Design Guidelines" means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established in Chapter 1056.

(7) "Eligible Facilities or Eligible Support Structure Request" means any request for modification of an existing Wireless Support Structure or base station that does not substantially change the physical dimension of such Wireless Support Structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:

(A) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than six (6) feet;

(B) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than four (4) cabinets, whichever is less;

(C) The installation of any new ground mounted equipment cabinets if there are no existing ground mounted equipment cabinets;

(D) Any excavation or deployment outside of the current site of the Facility;

(E) Removal of any concealment elements of the Facilities or the Wireless Support Structure; and

(F) Any change that does not comply with this Chapter, the Design Guidelines set forth in Chapter 1056, or state or federal law and regulations.

The threshold for measuring increases that may constitute a substantial change are cumulative, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the federal Spectrum Act on February 22, 2012).

(8) "Facilities" means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.

(9) "Facilities Operator" means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of

Facilities. Facilities Operator includes:

(A) Operators;

(B) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio Revised Code Section 4939.031(E) and who have obtained a Small Cell Use Permit; and

(C) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio Revised Code Section 4939.033 and who have obtained a Small Cell Use Permit.

(10) "Operator" means a wireless service provider, cable operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator or a video service provider that provides information services as defined in the federal "Telecommunications Act of 1996," 110 State. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

(11) "Public Way" or "Right-of-Way" means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

(12) "Small Cell Facility" means a wireless facility:

(A) That meets both of the following requirements:

(i) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its elements can fit within an enclosure of not more than six (6) cubic feet in volume; and

(ii) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) 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 cables for the connection of power and other services.

(B) That includes a "Small Wireless Facility" which is a type of Small Cell Facility:

(i) In which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume;

(ii) Where such antenna is associated with a structure: (a) fifty (50) feet or less in height, including the antenna; or (b) that is nor more than ten percent (10%) taller than adjacent structures; or (c) is not extended in height more than ten percent (10%) or to a height exceeding fifty (50) feet, whichever is greater; and

(iii) Which also otherwise satisfies the definition of "Small Wireless Facilities" found in the FCC's Small Cell Order adopted September 26, 2018, FCC 18-133.

(13) "Small Cell Equipment" means a Small Cell Facility and all Accessory Equipment.

(14) "Small Cell Use Permit" means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

(15) "Wireless Support Structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, "Wireless Support Structure" excludes the following except in connection with a Small Cell Facility, in which case the following are not excepted:

(A) A utility pole or other facility owned or operated by a municipal electric utility; and

(B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolley buses.

1054.02 CONSENT REQUIRED.

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the Chief Building Official in accordance with the requirements of this Chapter, Design Guidelines set forth in Chapter 1056 of this Code, Ohio Revised Code Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the Chief Building Official and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the Small Cell Use Permit, this Chapter, and the Design Guidelines set forth in Chapter 1056 of this Code. Further, no Small Cell Use Permit shall be construed as any warranty

of title.

1054.03 PERMIT APPLICATION TYPES.

Applicants shall classify their Application as one of the following types:

(a) Type 1: Eligible Facilities Requests.
(b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that does not constitute an Eligible Facilities Request.
(c) Type 3: New Wireless Support Structure. Such Applications address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify that the Small Cell Equipment will be placed on the Wireless Support Structure within one hundred eighty (180) days from the date the Small Cell Use Permit is issued.
(d) For Type 2 and Type 3 Application, Applicants shall indicate whether the Application is or is not for a Small Wireless Facility.

1054.04 CONSOLIDATED CONSENT APPLICATIONS.

(a) Pursuant to Ohio Revised Code Section 4939.0312, an Applicant may file one consolidated Application for up to thirty (30) individual Small Cell Facilities or thirty (30) individual Wireless Support Structures as long as the Facilities or Wireless Support Structures for which consent is requested are substantially similar.
    (1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.
    (2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.
    (3) Applications for Facilities and Wireless Support Structures cannot be commingled.
(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.
(c) Although Applications for Small Wireless Facilities may be filed on a consolidated basis, application involving Small Wireless Facilities may not be commingled with applications for other Small Cell Facilities or Wireless Support Structures. The limit on the number of Applications that may be filed in a consolidated application pursuant to Section 1054.04(a) shall not apply to applications involving Small Wireless Facilities.

1054.05 APPLICATION FEE.

(a) The fee for each Application is Two Hundred Fifty Dollars ($250.00). The Application Fee is adjusted upward by ten percent (10%) every five (5) years, rounded

to the nearest Five Dollars ($5.00), beginning in the year 2023.

(b) An Application shall not be deemed complete until the Application Fee is paid in full.

(c) If Applications are consolidated, then the Application Fee shall be the sum resulting from the Application Fee set forth in Subsection (a) multiplied by the total number of Facilities, Wireless Support Structures or Small Wireless Facilities included in the consolidated Application.

1054.06 ATTACHMENT FEE.

(a) In addition to the Application Fee, an annual Attachment Fee shall be paid to the City for each Small Cell Facility attached to a municipally owned Wireless Support Structure in the amount of Two Hundred Dollars ($200.00). The Attachment Fee is adjusted upward by ten percent (10%) every five (5) years, rounded to the nearest Five Dollars ($5.00), beginning in the year 2023.

(b) The first year Attachment Fee shall be paid when the Collocation is complete and no later than January 1st of each year thereafter. The first year Attachment Fee shall not be prorated, regardless of the date that the Collocation is complete.

1054.07 REQUIRED APPLICATION MATERIALS.

The Applicant must submit the following documentation with each Application.

(a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.

(b) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Application and to be notified in the case of emergency.

(c) Fully dimensional scaled site plan (scale no smaller than one (1) inch equals forty (40) feet). The site plan must include:

(1) The exact proposed location of the Facilities within the Right-of-Way.

(2) All existing Facilities with all existing transmission equipment.

(3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within one hundred (100) feet surrounding the proposed Facilities.

(4) The legal property boundaries within one hundred (100) feet surrounding the proposed Facilities.

(5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within one hundred (100) feet surrounding the proposed Facilities.

(6) Access and utility easements within one hundred (100) feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one (1) inch equals ten (10) feet) of the

proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within three hundred (300) feet of the proposed Facilities prior to submitting the Application. The notice shall include:
   (1) Name of the Applicant.
   (2) Estimated date the Applicant intends to submit the Application to the City.
   (3) Detailed description of the proposed Facilities and the proposed location thereof.
   (4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one (1) inch equals forty (40) feet.

(f) A preliminary installation/construction schedule and completion date.

(g) Structural calculations prepared, stamped and signed by an Engineer licensed and registered by the State of Ohio, showing that the Wireless Support Structure can accommodate the weight of the proposed Facilities, including the Accessory Equipment.

(h) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Application to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between existing City infrastructure and Applicant's proposed Facilities.

(i) A landscape plan that demonstrates screening of the propose Facilities and Accessory Equipment.

(j) Drawings of the proposed Facilities. For all Facilities and Accessory Equipment depicted, the Applicant must also include, if applicable:
   (1) The manufacturer's name and model number.
   (2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware.
   (3) The noise level generated, if any.

(k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-use of the Facilities.

1054.08 APPLICATION REVIEW.

(a) Applications shall be evaluated in the timeframes as follows:
   (1) Type 1 Applications – Sixty (60) days.
   (2) Type 2 Applications – Ninety (90) days, except that for Small Wireless Facilities, the timeframe for a Type 2 Application shall be sixty (60) days.
   (3) Type 3 Applications – One hundred twenty (120) days, except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be ninety (90) days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in

Subsection (a) shall be tolled until the Application is made complete, as described below:

(1) To toll the time period for incompleteness, the City must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.

(A) In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to Subsection (b)(1), the time period set forth in Subsection (a) shall be deemed never to have started running at all until Applicant provides a supplemental submission.

(2) The time period set forth in Subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the City's notice of incompleteness issued pursuant to Subsection (b), but may be tolled again if the City notifies the Applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the City of the deficiencies in a supplemental submission tolls the time period set forth in Subsection (a) until the Applicant supplies the specified information.

(c) The timeframes set forth in Subsection (a) may be tolled by mutual agreement between the Applicant and the City. The timeframes in Subsections (a)(2) and (a)(3) may also be tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of Subsections (c)(1) and (c)(2) do not apply:

(1) If the City receives between fifteen (15) and thirty (30) Applications in a thirty (30) day period, then the City may toll for an additional twenty-one (21) days beginning with the sixteenth (16^{th}) Application.

(2) If the City receives more than thirty (30) Applications in a thirty (30) day period, then the City may toll for an additional fifteen (15) days for every fifteen (15) Applications received up to a maximum tolling period of ninety (90) days, as indicated below:

(A) Applications 31-45 – 36 additional days.
(B) Applications 46-60 – 51 additional days.
(C) Applications 61-75 – 66 additional days.
(D) Applications 76-90 – 81 additional days.
(E) Applications 91+ - 90 additional days.

(3) When an Applicant submits an underground area waiver request pursuant to Section 1056.13(d) of the Codified Ordinances, in which case the City may toll for an additional thirty (30) days.

(d) If two (2) Applicants request to Collocate on the same Wireless Support Structure or two (2) Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 1054.16, then the Chief Building Official may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for consent is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:
   (1) Failure to provide information required under Section 1054.07.
   (2) Failure to comply with the Design Guidelines set forth in Chapter 1056.
   (3) Failure to provide financial surety pursuant to Section 1054.15.
   (4) Failure to remove abandoned Facilities as required under Section 1054.12.
   (5) Conflict with the historic nature or character of the surrounding area.
   (6) Conflict with planned future improvements in the Right-of-Way.
   (7) Failure to comply with generally applicable health, safety and welfare requirements.

1054.09 PERMITTING PROCESS, DURATION, AND TERMINATION.

(a) Upon approval of the Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have an initial duration of no longer than ten (10) years. Permits may be renewed for additional five (5) year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of ten (10) years or the duration of the Facilities Operator's agreement with a wireless service provider pursuant to Section 1054.07(k), whichever is shorter.

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.

(e) Pursuant to Ohio Revised Code Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Accessory Equipment to a Wireless Support Structure within one hundred eighty (180) days of issuance of the Small Cell Use Permit, unless delay is caused by:
   (1) Make ready work for a municipally owned Wireless Support Structure; or
   (2) The lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within sixty (60) days after the Small Cell Use Permit was issued.

If the additional time to complete the installation exceeds three hundred sixty (360) days after the issuance of the Small Cell Use Permit, then the Small Cell Use Permit shall be deemed terminated regardless of the cause of the delay.

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed

terminated if the Facilities Operator fails to attach Accessory Equipment to the new Wireless Support Structure within one hundred eighty (180) days after issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual Attachment Fee required pursuant to Section 1054.06, then the Small Cell Use Permit will expire on the ninetieth (90^{th}) day from the date the annual Attachment Fee was due.

(h) At any time and upon service of a sixty (60) day advance written notice to the City, a Small Cell Use Permit may be terminated by the Facilities Operator.

(i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City owned Wireless Support Structures and the Right-of-Way to their former condition and utility.

(j) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the Small Cell Use Permit.

1054.10 ANNUAL REGISTRATION.

(a) All Facilities Operators shall register with the City each calendar year between January 1 and January 31 on a form provided by the Chief Building Official.

(b) The purpose of Annual Registration is to assist the City in monitoring use of the Right-of-Way; to maintain an accurate and current database of information concerning Facilities Operators; and to assist the City in managing the Right-of-Way in a manner that best serves the public health, safety and welfare.

(c) Registration forms will be provided by the City and shall require the following information:

(1) Any material changes to the information the Applicant provided the City in the Application, including, but not limited to:

(A) The identity, legal status, and federal tax identification number of the Facilities Operator, including any affiliates or agents that will use or be, in any way, responsible for the Facilities.

(B) The name, address and telephone number of the local officer, agent or employee to be notified in case of emergency.

(2) Evidence that the Facilities Operator is in compliance with the insurance, indemnity and financial surety requirements of this Chapter.

(3) Information regarding, and a preliminary construction schedule and completion date for any improvements the Facilities Operator plans in the Right-of-Way for the then following twelve (12) months.

(4) Any other information the Chief Building Official may reasonably require relevant to the Facilities Operator's occupancy of the Public Ways.

(d) The City shall have the right to access and review all the Facilities Operator's maps and/or as-built plans showing the location of Facilities in the Public Ways upon ten (10) days prior written request.

(e) Upon written request by the City, each Facilities Operator shall work in good faith with the City to provide, in a reasonable time and manner, maps and/or as-built plans

in a format compatible with the City's current and/or future mapping system.

(f) The Facilities Operator may designate any portion or portions of the maps and/or as-built plans as proprietary and/or a trade secret so as to remain confidential. In this however, that such information is subject to applicable public record laws and exceptions thereto. The City shall provide a Facilities Operator with written notice of any proposed inspection or disclosure prompted by a public records request related to the Facilities Operator's maps and/or as-built plans the Facilities Operator has designated to be confidential. The Facilities Operator shall have three (3) business days from the written notice to object to any public records disclosure and to agree in writing to defend and indemnify the City with respect to any litigation under the Ohio Public Records Act to compel disclosure and all costs thereof.

(g) In addition to the Annual Registration required hereunder, each Facilities Operator shall keep the required registration information current at all times.

1054.11 NONCONFORMING FACILITIES.

(a) Facilities in the Right-of-Way that are legally in existence on the date of adoption of this Chapter but that do not comply with the requirements of this Chapter may remain in the Right-of-Way but shall be considered a Nonconforming Facility.

(b) Any person or entity who owns or operates a Nonconforming Facility shall register such Facility pursuant to this Chapter within ninety (90) days of the date this Ordinance takes effect.

(c) If a Nonconforming Facility is damaged or destroyed beyond repair, any replacement Facility must be designed in accordance with all provisions of this Chapter, the Design Guidelines set forth in Chapter 1056, and state and federal law and regulations.

1054.12 ABANDONED AND DAMAGED FACILITIES.

(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within three hundred sixty five (365) days from the date the use was discontinued, the Facilities shall be considered a nuisance and the City may remove the Facilities at the expense of the Facilities Operator.

(b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damages Facilities shall be repaired no later than thirty (30) days after obtaining written notice or other actual knowledge that the Facilities are damaged. If the damaged Facilities are not repaired within thirty (30) days, then the damaged Facilities shall be considered a nuisance and the City may repair or remove the Facilities at the expense of the Facilities Operator.

1054.13 INSURANCE REQUIREMENTS.

As a condition of issuance of a Small Cell Use Permit, a Facilities Operator must secure and maintain, at a minimum, the following liability insurance policies insuring the Facilities Operator and naming the City, its elected and appointed officers, officials, agents, employees and representatives, as additional insureds:

(a) Comprehensive general liability insurance with limits not less than:
  (1) Five Million Dollars ($5,000,000.00) for bodily injury or death to each person.
  (2) Five Million Dollars ($5,000,000.00) for property damage resulting from any one accident.
  (3) Five Million Dollars ($5,000,000.00) for all other types of liability.

(b) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars ($3,000,000.00) for each person and Three Million Dollars ($3,000,000.00) for each accident.

(c) Workers' compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars ($1,000,000.00).

(d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars ($3,000,000.00).

(e) The liability insurance policies required by this Section shall be maintained by the Facilities Operator throughout the period of time during which the Facilities Operator is occupying the Right-of-Way or is engaged in the removal of its Facilities. Each insurance policy shall contain the following endorsement:

  "It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not renew."

(f) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Facilities Operator shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

(g) Upon written application to, and written approval by, the City Manager, a Facilities Operator may be self-insured to provide all of the same coverages as listed in this Section; except that all coverages for Workers' Compensation shall be in compliance with State law. No approval for self-insurance shall be given until the City Manager has made a complete review of the Facilities Operator's financial ability to provide such self-insurance. As part of the review process, the City Manager may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the requirements of this Section.

1054.14 INDEMNIFICATION.

A Facilities Operator shall indemnify, protect, defend and hold the City and its elected

officials, officers, employees, agents, insurers and volunteers harmless from and 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 from which recovery of damages is sought, to the extent that it is caused by the negligence of the Operator who owns or operates Small Cell Facilities and wireless service in the Right-of-Way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, maintaining, or removing Facilities in the Right-of-Way.

1054.15 FINANCIAL SURETY.

(a) Each Facilities Operator shall procure and provide to the City a bond, escrow, deposit, letter of credit or other financial surety in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.
(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety to be replenished to its prior amount within ten (10) business days after the City notifies the Facilities Operator in writing that it has drawn on the financial surety.

1054.16 RESERVED SPACE.

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-Way and on Wireless Support Structures for future utility, safety or transportation uses. Such space may be reserved in an Ordinance or plan approved by the City Manager, City Council, Chief Building Official and/or Planning Commission.

1054.17 REMOVAL OR RELOCATION OF FACILITIES.

(a) The City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receipt of a written request from the City to do so, then the City may remove the Facilities at the Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.
(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving written notice that the Facilities are improperly located.

1054.18 NOTICE OF WORK.

A Facilities Operator shall notify the Chief Building Official of all non-emergency work within ten (10) calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.

1054.19 CONSTRUCTION PERMIT.

(a) Facilities Operators are required to obtain a construction permit pursuant to this Section prior to commencing any of the following activities:
  (1) Collocation of Facilities on a Wireless Support Structure.
  (2) Replacement, modification, repair or maintenance of Facilities.
  (3) Construction, replacement, modification, repair or maintenance of a Wireless Support Structure associated with a Facility.
  (4) Any excavation of the Right-of-Way.
(b) No construction permit shall issue until a Small Cell Use Permit has issued and all contractors have registered with the City as required by Chapter 1442 of the Code.
(c) Facilities shall be constructed in accordance with all applicable federal, state, and local codes, rules, regulations and technical codes.
(d) To the extent reasonably possible, any work performed pursuant to an issued construction permit shall be done in the manner resulting in the least amount of damage and disruption of the Right-of-Way.
(e) All work performed pursuant to an issued construction permit shall be in accordance with approved final plans and specifications. The City Engineer shall have access to the work and such further information as required to ensure compliance. Field changes may be approved by the City Engineer if such changes are determined to be necessary due to site conditions or other changed circumstances.
(f) The Facilities Operator shall maintain a copy of the construction permit, Small Cell Use Permit and approved plans at the site, which shall be displayed and made available for inspection by the City whenever work is occurring.
(g) Upon order of the City, all work that does not comply with the Small Cell Use Permit, construction permit and/or approved plans shall immediately cease and be removed and/or corrected by the Facilities Operator.
(h) Upon completion of any work, the Facilities Operator shall promptly repair the Right-of-Way, property improvements, fixtures, structures and Facilities which were damaged and restore them as nearly as practicable to their prior condition.
(i) All trees, landscaping and grounds removed, damaged or disturbed as a result of work performed pursuant to the construction permit shall be replaced or restored as nearly as may be practicable to the condition existing prior to the performance of the work, except to the extent that tree trimming is necessary to prevent interference of tree branches with the Facilities.

1054.20 WAIVER.

It is within the reasonable discretion of the City Manager to waive any portion or portions of this Chapter, as permitted or warranted under state and federal law, where strict compliance with such requirements, in the judgment of the City Manager, is not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.

1054.21 PENALTIES; EQUITABLE REMEDIES.

(a) Any Facilities Operator or other person or entity acting as the agent of a Facilities Operator found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any provisions of this Chapter shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
(b) The City may revoke the Small Cell Use Permit of any Facilities Operator who violates, disobeys, omits, neglects, or refuses to comply with any provisions of this Chapter or the Design Guidelines set forth in Chapter 1056 or as promulgated by the City.
(c) Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter."

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to accommodate requests for Small Cell Facilities filed pursuant to the FCC's Small Cell Order which took effect on January 14, 2019. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading_____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Fijabi Julien-Gallam, CMC

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION

DATE: 9/23/2019

TO: Vice Mayor Michael Abella Jr. and Members of City Council

FROM: Carl S. DeForest, City Manager
Grant Aungst

COPY: Mayor Ron Falconi

LEGISLATION: **ORD. NO. 62-19** - An emergency ordinance establishing Chapter 1056 of the Codified Ordinances of the City of Brunswick titled "Small Cell Facility Design Guidelines". - **1st Reading** (To be brought from Planning & Zoning Committee, *Administration/Ken Fisher*)

BACKGROUND: Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 with regard to the authority of municipalities to regulate the installation of Small Cell Facilities in the public Right-of-Way, including on utility poles, traffic signals, and street lights, municipally owned facilities, and to construct, maintain, modify, operate, or replace Wireless Support Structures in the public Right-of-Way Ohio Revised Code Chapter 4939 to authorize municipalities to adopt and enforce Design Guidelines applicable to Small Cell Facilities, provided that the guidelines must be reasonable, and written, and based upon objective criteria regarding: (1) the location of ground-mounted Small Cell Facilities; (2) the location of Small Cell Facilities on a pole; (3) the appearance and concealment of Small Cell Facilities; and (4) the design and appearance of Wireless Support Structures, including heights limitations otherwise consistent with the Statute;

PURPOSE AND EXPLANATION:

1. Protect the health, safety, and general welfare of the citizens of the City;
2. Preserve the character of the City, including the City's neighborhoods, business districts and historic districts and to protect property values;
3. Give guidance to wireless telecommunication providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities; and
4. To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable state and federal laws.

IMPLEMENTATION SCHEDULE: Immediately upon passage.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

One Reading	Yes
Two Readings	No
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?

It is necessary to have this in place so the City may enforce and comply with HB 478 in a timely manner.

ADDITIONAL INFORMATION:

CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 62-19

BY: Mr. Delsanter, Mr. Hanek and Mrs. Rodriguez

AN EMERGENCY ORDINANCE ESTABLISHING CHAPTER 1056 OF THE CODIFIED ORDINANCES OF THE CITY OF BRUNSWICK TITLED "SMALL CELL FACILITY DESIGN GUIDELINES".

WHEREAS: Substitute House Bill 478 (Sub. H.B. 478) took effect on August 1, 2018;

WHEREAS: Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 with regard to the authority of municipalities to regulate the installation of Small Cell Facilities in the public Right-of-Way, including on utility poles, traffic signals, and street lights, municipally owned facilities, and to construct, maintain, modify, operate, or replace Wireless Support Structures in the public Right-of-Way;

WHEREAS: Sub. H.B. 478 also revised Ohio Revised Code Chapter 4939 to authorize municipalities to adopt and enforce Design Guidelines applicable to Small Cell Facilities, provided that the guidelines must be reasonable, and written, and based upon objective criteria regarding: (1) the location of ground-mounted Small Cell Facilities; (2) the location of Small Cell Facilities on a pole; (3) the appearance and concealment of Small Cell Facilities; and (4) the design and appearance of Wireless Support Structures, including heights limitations otherwise consistent with the Statute;

WHEREAS: On September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Order known as the "Small Cell Order," that limits and revises state and local authority to manage and regulate certain Small Cell Facilities within public Rights-of-Way nationwide, including local fees associated with such management and regulation, as well as the extent to which such regulations may deal with local aesthetic concerns;

WHEREAS: The FCC in December 2018 denied local government-filed motions to stay the effective date of the Small Cell Order, which has been challenged in Court, such that the Small Cell Order took effect on January 14, 2019; and

WHEREAS: This Council desires to establish Design Guidelines applying to Small Cell Facilities, including Wireless Support Structures, to lawfully exercise municipal authority on this subject in a manner that is consistent with Ohio Revised Code Chapter 4939 and the FCC's Small Cell Order.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That Chapter 1056 of the City of Brunswick Codified Ordinances titled "Small Cell Facility Design Guidelines" is hereby established to read as follows:

"1056.01 OVERVIEW AND PURPOSE; DEFINITIONS.

(a) The purpose of these Design Guidelines is to:

(1) Protect the health, safety, and general welfare of the citizens of the City;

(2) Preserve the character of the City, including the City's neighborhoods, business districts and historic districts and to protect property values;

(3) Give guidance to wireless telecommunication providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities; and

(4) To exercise the City's home rule authority and, to the extent legally permitted, not to conflict with or preempt applicable state and federal laws.

(b) For purposes of this Chapter, and the interpretation and enforcement hereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

(1) "Applicant" means any person or entity who submits an Application pursuant to Chapter 1054.

(2) "Application" means the form issued by the Chief Building Official to be submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.

(3) "Accessory Equipment" means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.

(4) "City" means the City of Brunswick.

(5) "Collocation" or "Collocate" means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.

(6) "Design Guidelines" means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, as established in this Chapter.

(7) "Facilities" means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.

(8) "Facilities Operator" means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:

(A) Operators;

(B) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support

Structure pursuant to Ohio Revised Code Section 4939.031(E) and who have obtained a Small Cell Use Permit; and

(C) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio Revised Code Section 4939.033 and who have obtained a Small Cell Use Permit.

(9) "Historic District" means a building, property or site, or group of buildings, properties or sites that are either of the following:

(A) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with Section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C; or

(B) A registered historic district as defined in section 149.311 of the Ohio Revised Code.

(10) "Operator" means a wireless service provider, cable operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator or a video service provider that provides information services as defined in the federal "Telecommunications Act of 1996," 110 State. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

(11) "Public Way" or "Right-of-Way" means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

(12) "Small Cell Facility" means a wireless facility:

(A) That meets both of the following requirements:

(i) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its elements can fit within an enclosure of not more than six (6) cubic feet in volume; and

(ii) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) 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 cables for the connection of power and other services.

(B) That includes a "Small Wireless Facility" which is a type of Small Cell

Facility:

(i) In which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume;

(ii) Where such antenna is associated with a structure: (a) fifty (50) feet or less in height, including the antenna; or (b) that is nor more than ten percent (10%) taller than adjacent structures; or (c) is not extended in height more than ten percent (10%) or to a height exceeding fifty (50) feet, whichever is greater; and

(iii) Which also otherwise satisfies the definition of "Small Wireless Facilities" found in the FCC's Small Cell Order adopted September 26, 2018, FCC 18-133.

(13) "Small Cell Equipment" means a Small Cell Facility and all Accessory Equipment.

(14) "Small Cell Use Permit" means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.

(15) "Underground Area" means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structures and facilities owned by the City or a transit authority, are located underground.

(16) "Wireless Support Structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, "Wireless Support Structure" excludes the following except in connection with a Small Cell Facility, in which case the following are not excepted:

(A) A utility pole or other facility owned or operated by a municipal electric utility; and

(B) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolley buses.

1056.02 GENERAL STANDARDS.

(a) Facilities shall not be installed unless the Facilities are compliant with these Design Guidelines, Chapter 1054 and any Application requirements, and all applicable local, state and federal laws and regulations.

(b) A Facilities Operator shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in the Application for a Small Cell Use Permit.

(c) All work shall be performed in a professional manner consistent with the highest standards of workmanship.

(d) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable local, state and federal laws and regulations.

(e) Facilities shall not be installed in any location that causes any interference with the City's public safety radio system, traffic and emergency signal light system, or other City safety communication systems or system components.

(f) The City may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible or would materially inhibit the provision of wireless services by the Facilities Operator within the City.

(g) Facilities shall not interfere with existing or planned street trees.

(h) Signage shall be mounted on all new Facilities providing the Facilities Operator's name, an emergency contact phone number, an information contact number, and all other information required by law. Unless otherwise prohibited by law, signage shall be discreet in color and shall match the Facilities and surrounding area and font size used on the sign shall be no smaller than nine (9) point font and no larger than fourteen (14) point font.

(i) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from the Facilities.

(j) Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.

(k) The City may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but shall not be limited to, fencing, public art, strategic placement, and placement within existing or replacement street furniture.

(l) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.

(m) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the City, and the color shall match the Facilities. The City may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the City determines a non-matching color would better fulfill the purposes of these Design Guidelines.

(n) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facilities Operator's sole expense as soon as practicable, but no later than ten (10) days from the date the Facilities Operator receives notice of the graffiti.

1056.03 SPECIFICATIONS FOR COLLOCATION.

(a) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.

(b) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least six (6) feet above ground level. If Small Cell Equipment is projecting toward the street then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level.

1056.04 ANTENNAS.

(a) Antennas and Accessory Equipment must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.
(b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet; provided, however, that the permissible increase in height resulting from Collocation or installation of a Small Wireless Facility on a Wireless Support Structure shall be as provided in Section 1056.01(b)(12).
(c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister, shroud, or other enclosure. All Accessory Equipment associated with the antenna shall be concealed and shall not visibly protrude from the shroud or canister.
(d) The width of the canister or other shroud encasing the antenna and Accessory Equipment shall not exceed the width of the narrowest portion of the Wireless Support Structure.
(e) The enclosure or shroud shall be painted to match or complement the Wireless Support Structure.
(f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.
(g) Antennas shall not impair light or views from adjacent window(s).
(h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The City may approve a side-mounted antenna if, in the City's judgment, the side-mounted antenna would be more appropriate given the built environment, neighborhood character, overall site appearance or would promote the purposes in these Design Guidelines.

1056.05 WIRELESS SUPPORT STRUCTURE MOUNTED EQUIPMENT.

(a) All Wireless Support Structure mounted Small Cell Equipment other than the antenna(s) and electric meter must be concealed within an equipment cabinet.
(b) Equipment cabinets shall be mounted flush to the Wireless Support Structure.
(c) Equipment cabinets shall be stacked together on the same side of the Wireless Support Structure and oriented away from any windows and doorways to minimize visual impacts thereon.
(d) The equipment cabinets must be non-reflective and painted, wrapped or otherwise colored to match the Wireless Support Structure.

1056.06 GROUND-MOUNTED SMALL CELL EQUIPMENT.

(a) The City shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant:
  (1) Proposes the ground-mounted equipment in connection with a Collocation; and
  (2) Shows that the equipment cannot be feasibly placed on the Wireless Support Structure or in an underground vault.
(b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not technically feasible or would materially inhibit the provision of wireless services by the Applicant within the City, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.
(c) All ground-mounted Small Cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.
(d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in any way.

1056.07 CABLES.

(a) All cables, conduit and wiring shall be located inside conduits and inside the Wireless Support Structure or an equipment cabinet.
(b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible.

1056.08 ELECTRICAL METERS.

(a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.
(b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. If not prohibited by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

1056.09 UTILITY LINES.

Service lines shall be underground to avoid additional overhead lines. The underground cables and wires must transition directly into the base of the Wireless Support Structure without any external junction box.

1056.10 SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES.

(a) A Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:
   (1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or
   (2) An existing Wireless Support Structure is located within one hundred (100) feet or less of the proposed site of a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

(b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved or required by the City.
   (1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the City.
   (2) The City may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood Wireless Support Structure.

(c) The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be greater than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 1056.01(b)(12). Notwithstanding the foregoing limitation, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in any Residential District, so long as there is no Wireless Support Structure or utility pole taller than thirty (30) feet located within three hundred (300) feet of the location of the proposed replacement Wireless Support Structure; provided, however, that if a Small Wireless Facility is to be mounted upon it, the Facilities Operator may request a height consistent with Section 1056.01(b)(12).

(d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the City.

(e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the City.
   (1) If partially removed, the original Wireless Support Structure foundation shall be taken back to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half (1/2) inch to three-quarter (3/4) inch compose of rock material. The remaining eight (8) inches shall be native soil and landscaped with natural vegetation that is the same as the surrounding vegetation.
   (2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed.

The type of backfill material and compaction required is:

(A) One-half (1/2) sack slurry for the entire depth in paved areas; and

(B) One-half (1/2) sack slurry for the entire depth except the top twelve (12) inches will be native soil in landscaped areas and landscaped with natural vegetation that is the same as the surrounding vegetation.

1056.11 SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES.

(a) New Wireless Support Structures shall be designed and constructed to accommodate at least two (2) sets of Small Cell Equipment on the same Wireless Support Structure.

(b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles or utility poles.

(c) In Residential Districts, new Wireless Support Structures shall be located at the shared property line between residential parcels where the parcels intersect the Right-of-Way.

(d) In non-Residential Districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property line where the parcels intersect the Right-of-Way.

(e) New Wireless Support Structures shall not interfere with any metered parking space.

(f) A new Wireless Support Structure shall not be located in front of a building entrance or exit.

(g) The overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be greater than forty (40) feet in height above ground level; provided, however, that the height of a new Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 1056.01(b)(12). Notwithstanding the foregoing limitation, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in any Residential District, so long as there is no Wireless Support Structure or utility pole taller than thirty (30) feet located within three hundred (300) feet of the location of the proposed new Wireless Support Structure; provided, however, that if a Small Wireless Facility is to be mounted upon it, the Facilities Operator may request a height consistent with Section 1056.01(b)(12).

(h) The City may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure.

1056.12 HISTORIC DISTRICT REGULATIONS.

Except antennas, all Small Cell Equipment to be located in the Right-of-Way in Historic Districts shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the City may specify, as long as such measures do not have the effect of prohibiting or materially inhibiting the Facilities Operator's provision of reasonable service in the City. Such measures are not

considered part of the Small Cell Facility for purposes of Facility size restrictions in this Chapter or Chapter 1054. A waiver submitted pursuant to Section 1056.13(d) will be considered if the requirements are shown to be technologically feasible.

1056.13 UNDERGROUND AREA REGULATIONS.

(a) Whenever any existing electric utilities, cable facilities, telecommunications facilities or other facilities are located underground within a Public Way in the City, the Facilities Operator must also locate its Facilities underground.
(b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.
(c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.
(d) An Operator may apply to the Board of Zoning Appeals for a waiver of the underground placement requirement if the requirements prevent the Operator from achieving its service objective, the requirement has the effect of prohibiting the provision of reasonable service in the City, and the Operator's objective of providing reasonable service in the City cannot be met by placing Facilities at:
    (1) A location in the public Right-of-Way where the prohibition does not apply;
    (2) A utility easement the Operator has the right to access; or
    (3) Other suitable locations or structures made available by the City at reasonable rates, fees and terms.
(e) Submission of a waiver request pursuant to Subsection (d) is subject to the Facilities Operator's agreement to toll timeframes set forth in Section 1054.08(a) of the Code by thirty (30) days.

1056.14 WAIVER.

It is within the reasonable discretion of the City Manager to waive any portion or portions of this Chapter, as permitted or warranted under state and federal law, where strict compliance with such requirements, in the judgment of the City Manager, is not necessary or appropriate to protect the City's interests and the purposes and intent of this Chapter.

1056.15 CONFLICT.

To the extent this Chapter is in conflict with any other provisions of the Codified Ordinances, including, but not limited to Chapter 1052, the provisions of this Chapter shall apply.

1056.16 PENALTIES; EQUITABLE REMEDIES.

(a) Any Facilities Operator or other person or entity acting as the agent of a Facilities

Operator found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any provisions of this Chapter shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(b) If a Facilities Operator fails to comply with these Design Guidelines, Chapter 1054, or the provisions of Chapter 4939 of the Revised Code, the City may terminate the Facility Operator's Small Cell Use Permit.

(c) Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary to accommodate requests for Small Cell Facilities filed pursuant to the FCC's Small Cell Order which took effect on January 14, 2019. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading_____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Fijabi Julien-Gallam, CMC