

**VILLAGE OF SOUTH LEBANON, OHIO**

**ORDINANCE NO. 2018-13**

**TO AMEND ORDINANCE NO. 2001-13 RELATING TO SMALL CELL TOWERS, AND  
DECLARING AN EMERGENCY**

**WHEREAS** in House Bill (H.B.) 478 of the 132<sup>nd</sup> General Assembly, the State passed laws governing the installation of small cell towers in the municipal right-of-way; and

**WHEREAS** the Village of South Lebanon by enacting this Ordinance, desires to establish general procedures and standards, consistent with all applicable federal, state, and local laws, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures in the right-of-way;

**WHEREAS**, immediate action is required to regulate small cell facilities and wireless support structures as the effective date of HB 478 is August 1, 2018, and it is necessary in order to preserve the public peace, health, safety or welfare of the Village.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of South Lebanon, at least two-thirds of all members elected thereto concurring:

**Section 1.** That section 34 of the Codified Ordinances of the Village of South Lebanon shall hereby be enacted to read as set forth in Exhibit A of this Ordinance, attached hereto and incorporated by reference herein.

**Section 2.** That this Ordinance is declared to be emergency legislation, necessary for the immediate preservation of the public peace, health, and safety, which shall be effective upon passage.

**Section 3.** That the Council hereby finds that this Ordinance was deliberated upon and passed in open meetings in compliance with Section 121.22 of the Ohio Revised Code.

Adopted this 2nd day of August, 2018.

Attest: Nicole Armstrong  
Nicole Armstrong, Fiscal Officer/Clerk

James D. Smith  
James D. Smith, Mayor

Rules Suspended: <u>8/1</u> /2018 (if applicable)	Effective Date - / /2018
Vote - <u>6</u> Yeas	
<u>    </u> Nays	
First Reading - / /2018	Effective Date - / /2018
Second Reading - / /2018	
Third Reading - / /2018	
Vote - <u>    </u> Yeas	
<u>    </u> Nays	

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: 

Date: 8/2 /2018



## **SECTION 34. SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES WITHIN THE RIGHT-OF-WAY**

### **Section 34.0 PURPOSE AND INTENT**

- (A) The purpose of §§ 34.0 through 34.9 of this section is to establish general procedures and standards, consistent with all applicable federal, state, and local laws, for the siting, construction, installation, collocation, modification, operation, and removal of small cell facilities and wireless support structures in the right-of-way.
- (B) The intent of §§ 34.0 through 34.9 of this section is to:
- (1) Establish basic criteria for applications to locate small cell facilities and wireless support structures in the right-of-way and authorize the Village Administrator or his or her designee to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants;
  - (2) Ensure that small cell facilities and wireless support structures are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations;
  - (3) Preserve the character of the Village of South Lebanon by minimizing the potentially adverse visual impact of small cell facilities and wireless support structures through careful design, siting, landscaping and camouflaging techniques to blend these facilities into their environment to the maximum extent practicable;
  - (4) Enhance the ability of wireless service providers to deploy small cell facilities and wireless support structures in the Village quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability;
  - (5) Establish an application process and structure for payment of fees and charges to be uniformly applied to all applicants, operators and owners of small cell facilities and wireless support structures for such facilities;
  - (6) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all FCC rules and regulations to interpret and implement applicable federal statutes.

### **Section 34.1 APPLICABILITY**

- (A) Subject to the Ohio Revised Code and approval of an application under §§ 34.0 through 34.9 of this section, an operator may collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the Village right-of-way.



- (1) An operator shall comply with generally applicable standards that are consistent with §§ 34.0 through 34.9 of this section and any rules, regulations, and design guidelines adopted by the Village for the collocation of a small cell facility and construction, maintenance, modification, operation, or replacement of wireless support structures in, along, across, upon, and under the Village right-of-way, unless otherwise prohibited by state or federal law.
- (2) All wireless support structures and small cell facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the right-of-way by the Village, the traveling public, or other public utilities.

*Exclusions.*

- (3) Amateur radio facilities. This section shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
  - (4) Certain over-the-air receiving devices (OTARD). This section shall not govern the installation of any OTARD antennas covered under FCC regulations codified in 47 C.F.R. §§1.4000 et seq., as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.
  - (5) Handsets and user equipment. This section shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the right-of-way.
- (B) The permitting procedures and authorizations set forth herein in §§ 34.0 through 34.9 shall apply only to small cell facilities and wireless support structures in the right-of-way, and do not authorize the construction and operation of a wireline backhaul facility.
- (C) Relationship to other sections. This section shall supersede all conflicting requirements of other titles and sections of this Code regarding the locating and permitting of small cell facilities and wireless support structures in the right-of-way.
- (D) Nothing in this section precludes the Village from applying its generally applicable health, safety, and welfare regulations when granting consent for a small cell facility or wireless support structure in the Village right-of-way.

**Section 34.2 DEFINITIONS**

(A) *General use of terms.*

- (1) The terms, phrases, words, and their derivations used in §§ 34.0 through 34.9 shall have the meanings given in this section.



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

(B) *Defined terms.*

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

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

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

**ANTENNA.** Communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

**APPLICANT.** Any person that submits an application to the Village to site, install, construct, collocate, modify, and/or operate a small cell facility or wireless support structure in the right-of-way according to the requirements of §§ 34.0 through 34.9 of this section.

**CABLE OPERATOR.** Any person or group of persons:

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

**CABLE SERVICE.**

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

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

**CLEAR ZONE.** The unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and



auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.

**COLLOCATION or COLLOCATE.** To install, mount, maintain, modify, operate, or replace wireless small cell facilities on a wireless support structure.

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

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

**DESIGN GUIDELINES.** Means those detailed design guidelines, specifications and examples promulgated by the Village Administrator for the design and installation of small cell facilities and wireless support structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations, attached hereto and incorporated herein by reference.

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

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

**FRANCHISE AUTHORITY.** See **CABLE FRANCHISE.**

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

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

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

**OCCUPY OR USE.** With respect to the right-of-way, to place a tangible thing in the right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

**OPERATOR.** A wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of §§ 34.0 through 34.9, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.



**PERSON.** Any natural person, corporation, or partnership and also includes any governmental entity.

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

**RIGHT-OF-WAY.** The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bikepath, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the Village "Right-of-way" shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation.

**RIGHT OF WAY PERMIT, GENERAL.** A permit issued by the Village to persons who desire and are granted authority to utilize rights-of-way generally.

**RIGHT OF WAY PERMIT, SMALL CELL.** Means a permit issued by the Village for the collocation, construction, maintenance, operation, or replacement of small cell facility(ies) and/or wireless support structures in, along, across, upon and under the right-of-way.

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

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

**SUBSTANTIAL CHANGE:** Has the same meaning as described in 47 C.F.R. §1.40001(b)(7).

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

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

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

**WIRELESS FACILITY.**



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

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

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

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

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

### **Section 34.3 APPLICATION REQUIRED**

- (A) *General Requirements.* The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.
- (1) No person shall occupy or use the right-of-way except in accordance with law.
  - (2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.
  - (3) No person shall occupy or use the right-of-way without first obtaining, under this section, other applicable right-of-way sections contained in the Village Code of Ordinances, or section 1332.24 or 4939 31 of the Ohio Revised Code, any requisite consent of the Village. Before placing small cell facilities or wireless support structures in the right-of-way, an operator must apply for and receive a general right-of-way permit. If the operator's sole activities in the right-of-way will consist solely of collocating small cell facilities, constructing, modifying, or replacing new wireless support structures and associated small cell facilities, removing such facilities, or eligible facilities requests, then the operator shall



not be required to pay the annual fee for general right-of-way permittees. This provision shall not be construed to waive application fees or any other construction or work permit necessary for work in the Village.

(B) *Pre-Application Conference.*

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

(C) *Application Required.* In accordance with federal and state law and the Village code, an operator may apply to the Village to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the Village rights-of-way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/ or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the Village rights-of-way shall first duly file a written application with the Village, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines, attached hereto and incorporated herein by reference, as modified from time to time by the Village Administrator.

(D) *Required Application Materials.* Unless otherwise required by state or federal law, all applicants shall submit to the Village materials and information associated with each application as outlined in the Design Guidelines in order for the application to be considered complete.

**Section 34.4 APPLICATION REVIEW TIMEFRAMES AND PROCESS**

(A) *Permit Application Review Timeframes.*

- (1) *Collocation of Small Cell Facilities on Existing Wireless Support Structures.* The Village shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than ninety days after the date of filing by an entity of a completed application.
- (2) *New Wireless Support Structures and Associated Small Cell Facilities.* The Village shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right-of-way not later than one hundred twenty days after the date of filing by an entity of a completed application.
- (3) *Wireless Support Structure and/or Small Cell Facilities Removal.* The Village shall grant or deny its consent for requests to remove wireless support structures associated with small



cell facilities from the right-of-way typical to the review timeframes for the General Right-of-Way Permit required for this activity.

(4) *Eligible Facilities Request.* The Village shall approve Eligible Facilities Requests in accordance with Ohio Revised Code Section 4939.47 C.F.R. §1.40001, and §§ 34.0 through 34.9 herein not later than sixty days after the date of filing by an entity of a submitted application.

(B) *Failure to grant or deny within prescribed timeframes.* If the Village fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required under Section 34.4(A), provided the time period is not tolled under Section 34.4(D) or extended with the written consent of the applicant and the Village Administrator, the request shall be deemed granted upon the requesting entity providing notice to the Village that the time period for acting on the request has lapsed.

(C) *Application denials.*

(1) The Village shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.

(2) If a request for consent is denied, the Village shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the Village, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and administrative resources necessary to protect the public health, safety, and welfare.

(D) *Tolling of required timeframes.*

(1) The time periods required in Section 34.4(A) may be tolled only:

(a) By mutual agreement between the entity requesting consent and the Village;

(b) In cases where the Village determines that the application is incomplete; or

(c) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in Section 34.4(A) due to the lack of resources of the Village, then the Village may toll the time limits as follows:

1. The time period may be tolled for up to twenty-one days for the first fifteen small cell facility or wireless support structure requests received by the Village above the thresholds provided in the Table below within any consecutive thirty-day period:



Population of Village at time Small Cell Facility or Wireless Support Structure Applications are received:	Number of Applications:
30,000 persons or less	15 applications or more
30,001 to 40,000 persons	20 applications or more
40,001 to 50,000 persons	25 applications or more
50,001 to 60,000 persons	30 applications or more
60,001 to 100,000 persons	60 applications or more

2. Further, for every additional fifteen requests that the Village receives above the thresholds provided in the Table above the Village may toll the time period for those requests for up to fifteen days in addition to the time period provided in division (1)(c)(1) of this section.
  3. In no instance shall the Village toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the Village shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.
- (2) To toll the time period for incompleteness, the Village shall provide written notice to the person requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.313 of the Ohio Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.
  - (3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the Village's notice of incompleteness.
  - (4) If a supplemental submission is inadequate, the Village shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (E) *Consolidated application for multiple small cell facilities and/or wireless support structures.*
- (1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:
    - (a) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.



- (b) The Village may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.
- (2) In the case of a consolidated application, the fees provided for in section 4939.316 of the Ohio Revised Code and Section 34.3 may be cumulative. However, the Village, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.
- (3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.36 of the Ohio Revised Code and Section 34.4 (D)(1) herein. A request by a single operator for a new or replacement wireless support structure and associated small cell facility constitutes one request.

(F) *Timeframe for completion of permit.*

- (1) Collocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within one hundred eighty days after issuance of the permit, unless:
  - (a) The Village and the operator agree to extend this period; or
  - (b) A delay is caused by make-ready work for a Village-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:
    - 1. The operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services; and
    - 2. The additional time to complete installation does not exceed three hundred sixty days after issuance of the permit.
- (2) If divisions (1)(a) and (b) of this section cannot be met, the permit shall be void unless the Village grants an extension in writing to the operator.

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

- (1) Village consent shall not be required for either of the following activities conducted in the right-of-way:
  - (a) Routine maintenance of wireless facilities;
  - (b) The replacement of wireless facilities with wireless facilities that are consistent with the Village's current design requirements and guidelines and that are either:
    - 1. Substantially similar to the existing wireless facilities; or



2. The same size or smaller than the existing wireless facilities.
- (2) The Village may require a General Right-of-Way Permit for any activity described in division (1) of this section and for any activity for which consent is authorized herein and in accordance with state and federal law.

### **Section 34.5 DESIGN GUIDELINES**

- (A) The Village Administrator shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the Village shall consider in reviewing an application:
  - (1) The location of any ground-mounted small cell facilities;
  - (2) The location of a small cell facility on a wireless support structure;
  - (3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;
  - (4) The design and appearance of a wireless support structure.
- (B) The Design Guidelines shall provide examples of small cell facilities preferences including visual depictions.
- (C) The provisions in this section shall not limit or prohibit the Village Administrator's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.
- (D) The Village Administrator shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Design Guidelines and the standards articulated in §§ 34.0 through 34.9 of this section of the Village of South Lebanon Code of Ordinances, the language of §§ 34.0 through 34.9 shall take precedence over the language of the Design Guidelines.

### **Section 34.6 STANDARD CONDITIONS OF PERMIT APPROVAL**

- (A) *Standard conditions of approval.* Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this Section 34.6. The Village Administrator or his or her designee may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.
- (B) *Small Cell Facility Permit duration.* The Village's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the Village, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under Section 34.6(N).



(C) *Compliance with all applicable laws.*

- (1) Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.
  - (2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this section shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- (D) *Inspections; emergencies.* The Village or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The Village reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- (E) *Relocation or adjustment as requested by Village.* If requested by the Village, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at no cost to the Village, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with law.
- (F) *Contact information for responsible parties.* Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Village Administrator.
- (G) *Indemnification.* Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the Village and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates small cell facilities and wireless service in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.
- (H) *Interference with public safety radio services.* In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 CFR §§ 22.970-973 and 47 CFR §§ 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.
- (I) *Adverse physical impacts on adjacent properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse physical impacts to adjacent properties and/or uses that may



arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.

- (J) *Good condition required.* Small cell facilities and wireless support structures shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers. Notices of violation shall be served as provided in the South Lebanon applicable property maintenance laws. The notice shall provide that the operator has 20 days from date of service of the notice to appeal the notice or remedy it. If that time expires without appeal or remedy to the satisfaction of the Village, the Village may remedy the violation and charge the costs of said remedy to the operator.
- (K) *Graffiti abatement.* Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.
- (L) *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.
- (M) *Relocation for public improvement projects.* Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee's sole expense to accommodate construction of a public improvement project by the Village.
- (N) *Removal of small cell facilities if use discontinued or abandoned.*
  - (1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/ or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, as provided in Section 34.4(A)(3), which shall serve as the notice to the Village of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility and/ or wireless support structure shall be considered abandoned and the Village may remove it at the owner's expense.
  - (2) Small cell facilities and wireless support structures determined by the Village to be abandoned without notice from the owner may be removed by the Village at the owner's expense to ensure the public health, safety, and welfare.
  - (3) The Village reserves the right to inspect and to request information from the operator, which the operator shall provide following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right-of-way.

### **Section 34.7 SAFETY REQUIREMENTS**

- (A) *Prevention of failures and accidents.* Any person who owns a small cell facility and/or wireless support structure sited in the right-of-way shall at all times employ ordinary and reasonable care



and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

- (B) *Compliance with fire safety and FCC regulations.* Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (C) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the Village a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of §§ 34.0 through 34.9. The bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities and/ or wireless support structures or damage to Village property caused by an operator or its agent of each small cell facility and/ or wireless support structure in case the Village has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

### **Section 34.8 RECOVERY OF COSTS**

- (A) *Application processing fee.* For processing an application for consent, the Village may charge a fee for each small cell facility and wireless support structure requested as prescribed under section 4939.316 of the Ohio Revised Code and as listed on the associated application forms which shall be made available by the Village. The Village may adjust this fee ten per cent every five years, rounded to the nearest five dollars.
- (B) *Annual collocation fee.* For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the Village and located in the right-of-way, the Village may charge an annual fee as prescribed in 4939.22 of the Ohio Revised Code and as listed on associated application forms which shall be made available by the Village. The Village may adjust this fee ten per cent every five years, rounded to the nearest five dollars.
- (C) *Tax liabilities and assessments not applicable.* Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the Village to any state or local tax liabilities or assessments.

### **Section 34.9 SEVERABILITY**

The provisions of §§ 34.0 through 34.9 of this section are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this section when originally adopted by Council.

### **Section 34.99 PENALTY**

- (A) In addition to any other penalties set forth in this section, any person or permittee violating any section in this section shall be guilty of a minor misdemeanor. Each day the violation continues shall be deemed a separate offense.



- (B) Nothing herein shall prevent the Village from taking any other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violation.