

**CITY OF MIDDLETOWN**  
**ORDINANCE NO. 09-12-19-A**  
**AN ORDINANCE CREATING AN APPLICATION PROCESS AND POLICY FOR**  
**INSTALLATION OF SMALL CELLULAR TOWER SITES**

WHEREAS, the City of Middletown (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

NOW THEREFORE, a new Chapter of the City’s codified ordinances is hereby adopted as follows:

**Section 1:** A New Chapter of the City’s codified ordinance is adopted to read as follows:

**A. PURPOSE AND OBJECTIVES.**

The purpose of this chapter is to establish requirements and standards for the development and siting of small cell wireless communications facilities and ancillary support infrastructure on right of way owned by the City of Middletown. These regulations are intended to protect and promote public safety, community health and welfare, and the aesthetic quality of the City while providing for well-managed development of small cell wireless telecommunications in accordance with Kentucky and federal law.

**DEFINITIONS.**

Unless otherwise specifically provided, the terms used in this chapter shall have the following meanings:

1. “Applicant” means service provider(s) of the small cell wireless facilities that are proposed to be located within the City, or service provider(s)'s authorized representative.
2. “Ancillary Equipment” means any wires, cables, meter boxes, cable, conduit and connectors, and any other equipment required to operate and support the operation of small cell wireless facilities.
3. “Co-location or Collocate” means mounting or installing an antenna on a preexisting structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

4. "Decorative Facility" means a structure that is specially designed and placed for aesthetic purposes to reasonably match its surrounding environment and on which no appurtenances or attachments, other than a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory standards.
5. "Small cell wireless facility" means a wireless telecommunications facility that meets all the following conditions:
  - a. The facilities (i) are mounted on structure 50 feet or less in height including the antennas, or (ii) are mounted on structure no more than 110 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to the height of more than 50 feet or by more than 11- percent, whoever is greater, and
  - b. The facility does not require antenna structure registration under 47 C.F.R. Chapter 1, Subchapter A, Part 17.
6. "Right of Way" means all public streets and utility easements, now and hereafter owned by the City of Middletown.
7. "Technically feasible" means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design, concealment measures, or site location can be implemented without a reduction in the functionality of the small wireless facility.

**B. PERMIT APPLICATION SUBMITTAL REQUIREMENTS.**

1. Compliance Required. No applications for small cell wireless facilities shall be deemed complete unless the Applicant has submitted all required application materials and applicable fees, as provided by this section.
2. Site Plans and Layouts. Applicants shall submit the following information with the application electronically or by hardcopy. Hardcopy submittals shall be provided in triplicate.
  - a. Applicant's name, address, telephone number, e-mail addresses;
  - b. The names, addresses, telephone numbers and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the Applicant with respect to the filing of the application.
  - c. Map and Inventory of Proposed Sites. Applicant shall provide a map of the proposed site(s) and photographs of the structure if the installation is a proposed co-location. Applicants map shall show all land uses within eight hundred (800) feet of the proposed small cell wireless facility sites(s), shown on the map.
  - d. Photo Simulations of Small Cell Facility and Ancillary Equipment. Applicant shall show the placement of the proposed small cell wireless facility, including

- the placement of any Ancillary Equipment.
- e. Drawings and Plans. Applicant shall furnish site plan, plans, and elevations drawn to scale that identify the proposed small cell wireless facility and Ancillary Equipment placement. Elevations shall include all structures on which facilities are proposed to be located. All proposed structures, including ancillary equipment, shall be drawn to scale on the elevations. Site plans shall include depiction of signage required by this ordinance. In addition, site plans showing the existing condition of the structure and surrounding area shall be prepared and submitted.
  - f. Camouflage and/or Matching Methods. Applicant shall provide both a description of methods proposed to make the installation and all Ancillary Equipment a Decorative Facility and identify its colors and materials specifications.
  - g. Identify all Ancillary Equipment. Plans shall identify any and all Ancillary Equipment required to support the small cell wireless facility.
  - h. Unless the City waives the requirement in advance for good cause shown, Applicant shall provide notice to any property owner within 150 feet of any installation of the application via first class mail and provide evidence of that notice to the City with its application, along with any responses received from that notice. The City will provide the Applicant with any responses or contacts the City receives in response to such notices.
3. Fee Requirements. An application for small cell wireless facilities shall be accompanied by the following fee payments:
- a. Application Fee. Application fee(s) in the amounts specified in the City's right of way schedule.
  - b. Annual Rate. An Applicant authorized to place small wireless facilities and any related poles in the right of way will pay to the City compensation for use of the rights of way and collocation on City structures in the rights of way an aggregate annual rate not to exceed \$270 per small wireless facility. This rate, together with the application fee(s), shall be the total compensation that the Applicant is required to pay the City for the deployment of each small wireless facility in the rights of way and any associated pole.
  - c. Bonding. Depending on the type, size and number of facilities, as well as the financial viability of the Applicant, the City may require a reasonable and non-discriminatory bond (or other good and sufficient security from the Applicant), with the application to ensure that the City right of way is undamaged. Further, the City may require that a lesser bond (or other good and sufficient security from the Applicant), remains in place to ensure that the facilities will be properly removed when no longer in use.

### **C. PERMITTED FACILITIES AND LOCATIONS.**

Subject to compliance with all applicable provisions of this chapter, small cell wireless facilities, pursuant to an approved Permit issued by the City in compliance with this ordinance, shall be permitted on the right of way of the City of Middletown, upon the following terms and

conditions:

1. Public Right of way. Small cell wireless facilities in the public right of way in all zoning districts shall be in accordance with the following preferences. The preferred approaches for design and siting of new small cell wireless facilities in the public right of way are ranked as indicated in the following lists. When a lower ranked alternative is proposed, the Applicant must include technical information demonstrating that a higher ranked option is not feasible considering the provider's service objectives. Any claim of infeasibility shall be supported by substantial evidence.
  - a. Collocation on existing light poles;
  - b. Collocation on any other existing utility poles;
  - c. Collocation on any other existing pole, or an existing structure in the public right of way;
  - d. Location on a new pole of any kind.
2. The City may propose an alternative location for proposed facilities from the proposed location. City shall provide Applicant a written explanation of the reason the City believes the alternate location is preferable. The Applicant shall then, (a) accept the City's recommendation, (b) identify another alternate location and provide a written explanation why that alternate is preferable, or (c) provide written explanation why is continues to believe the original location remains the best alternative. The Facilities Operator shall utilize the alternate location unless the Facilities Operator shows that the alternate location is not feasible. Negotiation must occur within the timeframe set forth in Section E to identify a mutually agreed location.
3. No more than one small cell installation for any provider shall be permitted per each 1,000 feet along a City right of way; unless Applicant provides technical information demonstrating that application of this limitation is not feasible considering the Applicant's service objectives. Any claim of infeasibility shall be supported by substantial evidence.
4. Facilities shall not interfere with existing or planned street trees, landscaping and irrigation.
5. Encroachment Permit. An Applicant seeking to install, construct, operate, or perform work related to small cell wireless facilities in the public right of way shall also obtain a revocable encroachment permit from the City prior to commencing work.

**D. STANDARD REQUIREMENTS.**

1. State or Federal Requirements. Small cell wireless facilities, including ancillary equipment, must meet or exceed current standards and regulations of the Federal Communications Commission (FCC), all applicable federal, state, and local health and safety regulations, including the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and all other agencies of the state or federal government with the

regulatory authority over small cell wireless facilities. Federal law prohibits City from denying a permit if doing so would prohibit or have the effect of prohibiting the provision of personal wireless services. If, at any time, the state or federal standards are modified, then Applicant shall bring any and all permitted facilities into compliance with current standards and regulations within three (3) months of the effective date of such modified standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring permitted facilities into compliance with such revised standards and regulations shall constitute grounds for the revocation of City permit and require removal of the small cell facility at the service provider's expense.

2. **Building Codes and Safety Standards.** The Applicant shall ensure the structural integrity of its small cell wireless facilities installed within the City, and shall ensure that the facilities are maintained in compliance with standards contained in applicable state or local building codes, Louisville Metro Land Development Code and the applicable standards for small cell wireless facilities that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the City determines that a facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the Applicant of the facility, the Applicant shall have fifteen (15) days to bring such facility into compliance with such standards. Failure to bring such facility into compliance within the required time shall constitute grounds for the revocation of City permit and removal of the small cell facility at the owner's expense.
3. **Radio Frequency Emissions Standards.** Applicants shall confirm that the projected radio frequency emissions from any and all permitted small cell wireless facilities comply with applicable safety standard specified in 47 C.F.R. 1.1307(b). Such information shall be submitted with permit application materials and annually thereafter if requested by the City.
4. **Operation and Maintenance Standards.** All small cell wireless facilities shall always comply with the following standards in addition to any other conditions required by permits issued pursuant to this chapter.
  - a. Except as provided in this ordinance, an Applicant shall not install signs, display logos, or run advertisement on, alongside, or in connection with a permitted facility.
  - b. Every permitted facility shall contain signage listing the name and contact information for an emergency contact individual or service. The signage shall comply with design, material, color and location requirements as stated in the applicable encroachment permit. Contact information listed on the sign shall be kept current and promptly be provided to the City.
  - c. Each permitted facility and any ancillary equipment shall be maintained in good working condition and appearance, free from trash, debris, litter and graffiti and other forms of vandalism. Any damage from any cause shall be repaired as soon as reasonably possible to minimize occurrences of dangerous conditions or visual blight. Graffiti shall be removed from any facility or equipment as soon as

practicable, and in no instance more than forty-eight (48) hours from the time of receipt of City notice.

- d. Except for emergency repairs, testing and maintenance activities shall only occur between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, excluding holidays.
  - e. Each facility shall install the following security measures:
    - i. An on-site emergency "kill switch" to de-energize all radio frequency circuits and components of each permitted facility in order to protect emergency response personnel;
    - ii. Necessary safety measures to prevent unauthorized access, vandalism, and other safety concerns. Installations must comply with design standards, described herein and nuisance regulations, and must not interfere with City emergency services or transmission.
  - f. Except for public improvement projects undertaken primarily for beautification, each facility shall be relocated at Applicant's sole cost, upon demand by City with reasonable notice, to allow for public improvement projects which are necessary for the public's health and safety.
  - g. Applicant shall, at its sole cost, be responsible for repairing to City standard specifications or replacing in-kind any City facilities or improvements disturbed or damaged during the installation, maintenance, operation, repair or removal of Applicant's small cell wireless facilities, ancillary equipment, and any support infrastructure. City facilities or improvements covered by this subsection includes, but are not limited to the following:
    - i. curb, gutter, sidewalk, storm drains, and pavements;
    - ii. landscaping; and
    - iii. structures, buildings, light poles and fixtures.
5. Electrical Metering and Structural Standards. All small cell wireless facilities shall comply with the following requirements:
- a. All electrical power required by small cell wireless facility installations shall be metered independently from any anticipated or existing City projects or facilities.
  - b. All existing City-owned street light poles proposed for small cell wireless facility installations shall be inspected prior to installation in accordance with the most recent City structural standards for street light poles, including but not limited to safety and load bearing capability for the small cell wireless facility to be installed, as approved by the City Engineer.
    - i. Applicants requesting to install a small cell wireless facility on City-owned streetlight poles shall provide documentation demonstrating that the pole proposed for installation meets or exceeds such City standards.
    - ii. If the City-owned streetlight pole proposed for a small cell wireless facility installation does not meet or exceed structural standards, no small cell wireless facility may be installed thereon. Alternatively, the Applicant may at its own cost replace the existing streetlight pole at the proposed installation location with a pole that meets or exceeds the City's structural standards including safety and load bearing capability or capacity and complies with all other applicable legal requirements. Any existing

lighting fixture shall be reinstalled on the new pole at Applicant's cost. Applicant shall be responsible to coordinate electrification of the new installation with the utility provider, including independent metering of electrical power required for Applicant's installations as provided herein. Upon installation, the new pole shall become the property of the City.

6. Small cell wireless facilities and any Ancillary Equipment shall be located and designed to be a Decorative Facility and blend with the existing natural or built surroundings, provided, however, the obligation to install Decorative Facilities in the right of way shall be applied uniformly and non-discriminatorily and shall be no more burdensome than the requirements applied to similar types of infrastructure deployments for other utility installations which are similarly situated. Applicant cannot remove or damage any City landscaping and may be required by the City to install buffering landscaping.
7. Ancillary Equipment. Ancillary Equipment and any support facilities for small cell wireless facilities located in the public right of way shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the Applicant demonstrates that the more preferred installation location would be technically infeasible. Any claim of infeasibility shall be supported by substantial evidence. If undergrounding of Ancillary Equipment is not possible, all such equipment shall be located within a Decorative Facility, and shall comply with all applicable laws, including but not limited to the American Disabilities Act.
8. Pole Designs. Subject to Section D.6, small cell wireless facility pole installations shall be a Decorative Facility. Each installation shall be sufficiently designed and engineered such that no additional supporting hardware is required beyond the pole itself. A small cell wireless facility that is affixed to an existing light pole shall be painted and/or textured to match that structure.
9. Non-Reflective Materials. Small cell wireless facilities shall be constructed out of non-reflective materials (visible exterior surfaces only), or materials and colors consistent with surrounding backdrop. Anodized metal is an acceptable treatment.
10. Design Preservation. Applicants are responsible for maintaining and preserving design and aesthetic features for each facility, ancillary equipment and any support infrastructure, including but not limited to color, tint, shade, treatment, painting, surface treatment, replacement landscaping, Decorative Facility design, and concealment.
11. Security Fencing. Under no circumstances shall security fencing be permitted.
12. Volume. Each individual antenna may not exceed three (3) cubic feet in volume and all other equipment associated with a small wireless facility shall be no more than 28 cubic feet in volume. The volume calculation shall include any shroud, cabinet or other

concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

**E. PERMIT REVIEW, RENEWAL AND REVOCATION PROCEDURES.**

The City Commission shall review an application subject to this Chapter considering its conformity with applicable provisions of this Chapter, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

- (1) For an initial application, the City shall notify the Applicant in writing on or before the tenth (10) day of submission if the application is materially incomplete. In the written notice that the application is incomplete, the City must clearly and specifically identify all the missing documents or information and must specify the related code provision, ordinance, application instruction or otherwise publicly stated procedures related to missing information; and,
- (2) If the City notifies the Applicant in writing that the application is incomplete in accordance with subsection (1), the processing deadline in subsection (3) shall restart at zero on the date the Applicant submits all the documents and information identified by the Director to render the application complete; and,
- (3) The City shall make its final decision to approve or deny a complete application within (i) sixty (60) days of receiving an application for the collocation of a small wireless facility using an existing structure, and (ii) ninety (90) days for an application to locate a small wireless facility on a new structure. These timelines may be tolled only by mutual agreement between the Applicant and the City; and
- (4) The City must advise the Applicant in writing of its final decision, and if the final decision is to deny the application, the final decision document shall state the basis for a denial, including specific code provisions on which the denial was based, and send the decision document to the Applicant on or before the day the City denies the application.
- (5) The City must process all applications on a nondiscriminatory basis and may only deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole:
  - a. Materially and demonstrably interferes with the safe operation of traffic control equipment;
  - b. Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;
  - c. Materially fails to comply with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - d. Applicant refuses to comply with the City's preferred locations in Section C (1) herein;



- e. Fails to comply with applicable codes; or
- f. Fails to comply with the provisions in this Chapter.

#### **F. CESSATION OF OPERATIONS.**

1. Voluntary Cessation. Applicants intending to vacate a small cell wireless facility site shall notify the City of this intent to vacate at least thirty (30) days prior to the vacation.
2. Abandonment. A permit for a small cell wireless facility that is not operated for a continuous period of six (6) months shall be deemed lapsed and the site will be considered abandoned unless:
  - a. The City has received notice from the same operator of intent to resume operations within six (6) months; or
  - b. The City has received an application to transfer the permit to another service provider.
  - c. Removal of Facilities and Restoration of Site. No later than ninety (90) days from the date a small cell wireless facility has ceased operation, or from the date of receipt of the Applicant's notice of its intent to vacate the site, the Applicant or its authorized agent of the abandoned small cell wireless facility shall remove all equipment and improvements associated with the use, and shall restore the site to its original condition as shown on the plans submitted with the original approved application. The owner or agent shall provide written verification of the removal of the small cell wireless facility within thirty (30) days of the date the removal is completed.
3. Failure to Remove and Restore. A small cell wireless facility that is not removed and the site has not been restored in accordance with the requirements stated above, the site shall be deemed to be a nuisance pursuant to City ordinance. The City may cause the facility to be removed at the owners' expense or by calling any bond or other financial assurance to pay for removal.
  - a. For a single structure occupied by two (2) or more users, this subsection shall not apply while at least one (1) user continues to actively use the structure.
4. Destruction of Pole or City Discontinuation of Use. If a City-owned structure upon which a small cell wireless facility is located is damaged, destroyed, or demolished by acts beyond City's control, the right for such small cell wireless facility to continue occupying the structure shall cease. Applicant may opt to construct a pole or structure to replace the damaged, destroyed or demolished City structure in compliance with the requirements of this chapter, including structural inspection and separate metering requirements.

#### **G. PENALTIES**

1. Upon the failure of any entity to properly repair and restore any cut, excavation, or alternation to the City right of way, or fail to maintain any Facility placed in the right of

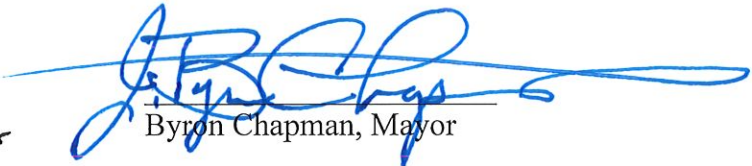
way, the City may authorize the repair or restoration of the area in a proper manner and charge said cost to the entity who violated this ordinance (and/or the entity upon whose behalf the work was done). In the event the City must make the repair or restoration, in addition to its other remedies, the City shall have a lien under the authority of KRS 65.8840 for the abatement of nuisance conditions against any property of said entities (if any) that the work directly benefits, or on whose behalf it was undertaken. The lien shall be recorded in the Jefferson County Clerk's office and shall bear interest at twelve percent (12%) per annum thereafter until paid.

- 2. In addition to the remedies set out above, the City shall cite any person, utility, company or entity for each violation of this ordinance in an amount not more than five hundred dollars (\$500.00) per violation. Each day of violation shall be considered a separate offense. Further, if deemed necessary by the City to protect the public ways and public utilities of the City any entity repeatedly violating this ordinance may be denied permission to make any future cuts or excavations until it fully remedies past violations and pays any outstanding fines.

**Section 2: This Ordinance shall be in full force upon its adoption and publication as required by law.**

Introduced and First Reading: 9-12-19

Second Reading and enactment this 10 day of Oct, 2019.

  
Byron Chapman, Mayor

Attest:   
Deborah Columbia, City Clerk

"Aye" Votes 5

"Nay" Votes 0

Final 10/2/19 4:00 p.m.