



City of Wilmington

Va'Shun "Vash" Turner
City Council Member, 5th District

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Public Works & Transportation Committee

Va'Shun "Vash" Turner, Chair
Zanthia Oliver
Loretta Walsh
Michelle Harlee
Ciro Adams, Vice-Chair
Ernest "Trippi" Congo, II
Dr. Hanifa Shabazz, Ex-Officio Member

NOTICE

Public Works & Transportation Committee Meeting
Monday, September 17, 2018
5:00 p.m.
1st Floor Council Committee Room

Agenda

1. Discuss an Ordinance to Approve the Removal of Alico Road from the Official City Map
2. Discuss a Resolution Declaring Alico Road to be Surplus and Approving the Property for Disposition to the State of Delaware
3. **Ord. 18-039** – An Ordinance to Amend Chapter 42 of the City Code Relating to the Installation of Wireless Telecommunications Facilities in the Public Rights of Way
4. Discuss a Resolution to Authorize and Approve the First Amendment to a License Agreement Between the City of Wilmington and T-Mobile Northeast LLC Regarding a Water Tower on or near New Castle Avenue (Route 9).
5. Discussion with the Departments of Public Works and Finance Regarding Monthly Utility Billing and Charges

(09/10/18)

Any members of the public who wish to speak during the committee meeting will be limited to three minutes per agenda item. If the public's permission to comment is abused, the Chair may exercise greater discretion in limiting public comment.

**AN ORDINANCE TO APPROVE THE REMOVAL OF ALICO ROAD
FROM THE OFFICIAL CITY MAP**

#4570

Sponsor:

Council
Member
Harlee

WHEREAS, the City of Wilmington is authorized to establish and revise plans of streets and alleys by the provisions of Sections 1-101, 2-306, and 5-400 of the City Charter, such actions to be done in accordance with applicable provisions of State law and Section 42-11 of the City Code; and

WHEREAS, the City holds legal title to Alico Road, Wilmington Delaware, being New Castle County Tax Parcel ID No. 26-035.4-0157 (the "Property"); and

WHEREAS, the State of Delaware (the "State") has requested the removal of the Property from the Official City Map, as more particularly described and depicted on Exhibit "A" attached hereto, in order to facilitate the State's long range plans for the adaptive reuse of the Customs House (516 King Street) and improvements to the Leonard L. Williams Justice Center (500 King Street); and

WHEREAS, the Department of Public Works has advised that: 1) there are no public water lines within the Property's right-of-way; 2) a public sewer line that traverses the Customs House property abuts the Property; 3) a stormwater line that traverses the Customs House property crosses the lower segment of the Property; and 4) no City street lights or other City assets are located in the Property's right-of-way; and

WHEREAS, the Department of Public Works supports the removal of the Property from the Official City Map conditioned upon the provision of easements to provide the necessary maintenance and emergency access to the affected public utility infrastructure within and adjacent to the Property's right-of-way; and

WHEREAS, the Department of Planning has no objection to the removal of the Property from the Official City Map because: 1) the Property does not serve as a

thoroughfare or significantly contribute to general traffic circulation or distribution patterns in immediate area, but rather serves as a localized access drive; 2) there are no findings to suggest that the street removal would create a detriment to the general public or to public safety; 3) the redevelopment of the Customs House property provides the opportunity to address the need for improving traffic movements internal to the super block along King Street; and 4) there is minimal impact on public utilities; and

WHEREAS, the Fire Marshal's Office has no objection to the removal of the Property from the Official City Map because the roadway will remain open for vehicle access to both the garage and the plaza and will serve as a fire lane for emergency vehicles; and

WHEREAS, there are no findings to suggest that the removal of the Property would create a detriment to the general public or to public safety; and

WHEREAS, the City Planning Commission has adopted Planning Commission Resolution 17-18, which recommended approval of the State's request to remove the Property from the Official City Map; and

WHEREAS, the City Council deems it necessary and appropriate to approve the removal of the Property referenced in Exhibit "A" from the Official City Map.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The removal from the Official City Map of Alico Road, which is described and illustrated on Exhibit "A" attached hereto, is hereby approved, and the Official City Map is hereby amended to reflect such removal, subject to the condition that easements in favor of the City of Wilmington shall be established along the area formerly designated as

Alico Road to provide the necessary maintenance and emergency access to the affected public utility infrastructure within and adjacent to such area.

SECTION 2. All City departments are hereby authorized to take any and all necessary actions required for: (i) the proposed removal of Alico Road from the Official City Map and (ii) the execution of easements in favor of the City of Wilmington along the area formerly designated as Alico Road to provide the necessary maintenance and emergency access to the affected public utility infrastructure within and adjacent to such area.

SECTION 3. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....September 13, 2018
Second Reading.....September 13, 2018
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2018.

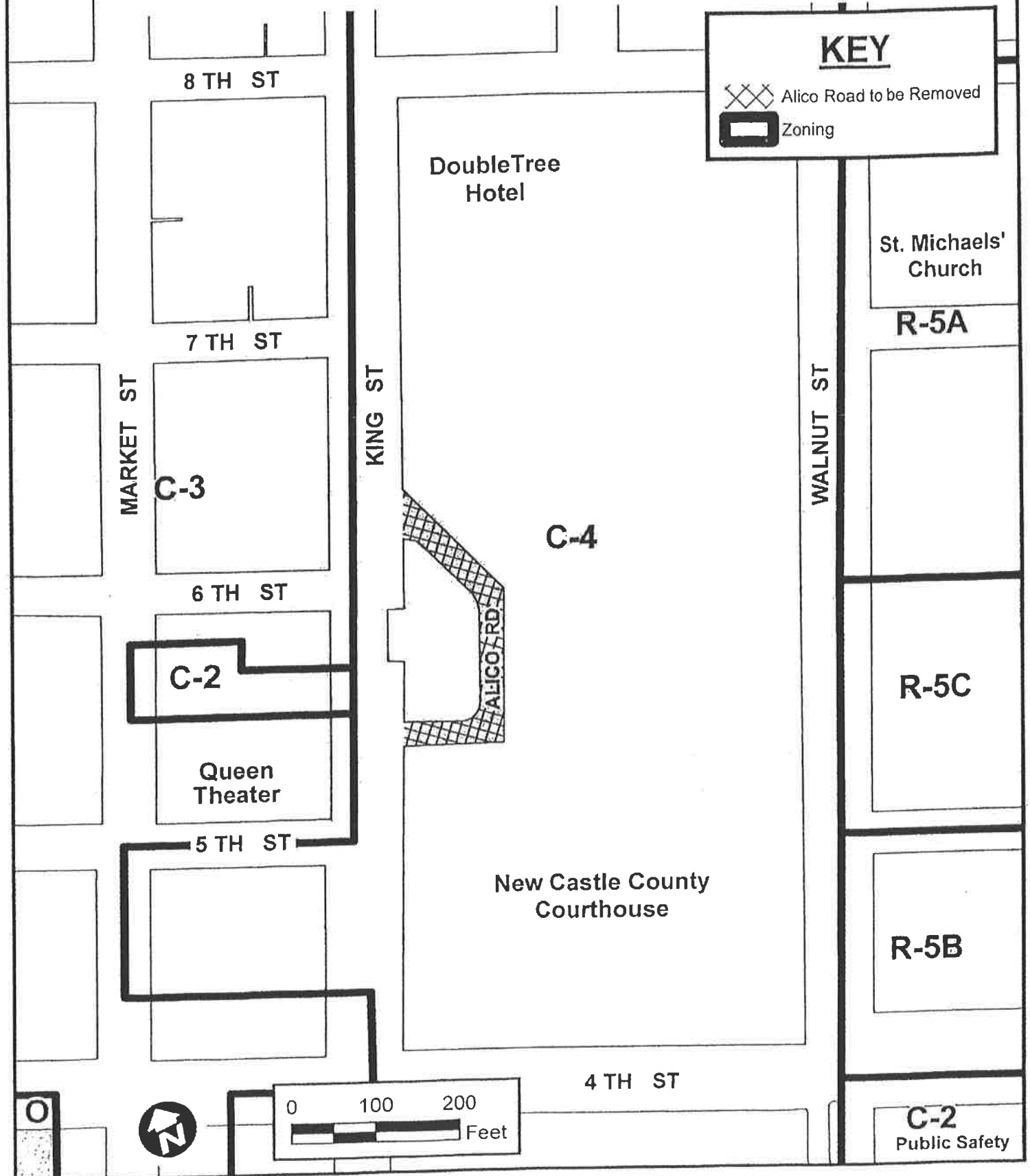
Mayor

SYNOPSIS: This Ordinance authorizes the removal of Alico Road from the Official City Map.

W0101832

EXHIBIT A

**CPC RESOLUTION 17-18
PROPOSED REMOVAL OF ALICO ROAD
(Tax Parcel: 26.0-35.4-0157)**



WCO
VOL R121 PAGE 207

DEED

06188



THIS DEED, Made this 31st day of March, in the year of our Lord one thousand nine hundred and eighty-three.

BETWEEN:

CHRISTINA GATEWAY CORPORATION, a Delaware corporation,
party of the first part,

AND

THE CITY OF WILMINGTON, a municipal corporation of the State of Delaware, party of the second part.

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of FORTY-FIVE THOUSAND FORTY-TWO and 71/100 DOLLARS (\$45,042.71), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part,

ALL THAT CERTAIN tract, piece or parcel of land shown as Parcel D on a plat prepared by Vandemark & Lynch, Inc., Consulting Engineers and Surveyors, Wilmington, Delaware dated June 21, 1982 and revised through March 30, 1983 entitled "Christina Gateway Plan", 4th Street to 7th Street, King Street to Walnut Street, City of Wilmington, New Castle County, Delaware ("the plat"), as recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, at Microfilm # 6691, being more particularly described, as follows, to wit:

BEGINNING at a point on the southeasterly side of King Street (at 85.5 feet wide), said point being a corner for Parcel B-1 on the plat and being distant South 28°-46'-00" West, 473.10 feet measured along the said southeasterly side of King Street from its intersection with the southwesterly side of 8th Street; thence from said point of Beginning and along the southwesterly line of said Parcel B-1, South 16°-12'-30" East, 172.45 feet to a point; thence along the northwesterly lines of Parcels B-1, B-2 and E on the plat, South 28°-47'-30" West, 180.76 feet to a point; thence along the northeasterly line of said Parcel E, North 61°-02'-45" West, 121.81 feet to a point on the said southeasterly side of King Street; thence thereby, North 28°-46'-00" East, 30.00 feet to a point, a corner for Parcel C on the plat; thence along the lines of said Parcel C, the six following described courses and distances: (1) South 61°-02'-45" East, 69.76 feet to a point of curvature; (2) Northeasterly by a curve to the left having a radius of 22.00 feet, an arc distance of 34.62 feet to a point of tangency, said point being distant by a chord of North 73°-52'-22.5" East, 31.16 feet from the last described point; (3) North 28°-47'-30" East, 104.72 feet to a point of curvature; (4) Northeasterly by a curve to the left having a radius of 47.00 feet, an arc distance of 36.91 feet to a point of tangency, said point being distant by a chord of North 06°-17'-30" East, 35.97 feet from the last described point; (5) North 16°-12'-30" West, 86.44 feet to a point; and (6) North 47°-16'-23" West, 17.54 feet to a point on the said southeasterly side of King Street; thence thereby, North 28°-46'-00" East, 55.25 feet to the point and place of Beginning. Containing within said metes and bounds, 0.299 acres of land be the same more or less.

SUBJECT to the terms and conditions of the following agreements: agreement by Wilmington Housing Authority, dated October 15, 1968 and recorded in Deed Record K, Volume 81, Page 653, New Castle County records; agreement by The City of Wilmington, dated September 12, 1975 and recorded in Deed Record X, Volume 90,

BEING the same lands and premises which Gilpin
Wilmington, Inc., et al., by Deed dated coincident herewith
and intended to be recorded immediately prior hereto in the
Office of the Recorder of Deeds, in and for New Castle County,
Delaware, did grant and convey unto Christina Gateway Corporation,
a Delaware corporation, in fee.

IN WITNESS WHEREOF, the said Christina Gateway Corporation, a Delaware corporation, has hereunto caused its hand and seal to be hereunto set.

SEALED AND DELIVERED
In the Presence of:

CHRISTINA GATEWAY CORPORATION

By:

ATTEST:

STATE OF DELAWARE:
NEW CASTLE COUNTY:

BE IT REMEMBERED, That on this 31st day of March 1983, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, DAVID W. SINGLETOW who acknowledged himself to be the PRESIDENT of CHRISTINA GATEWAY CORPORATION, a Delaware corporation, and that such being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the public body by himself and as said

GIVEN under my Hand and Seal of Office, the day and
year aforesaid.

Notary Public



CITY OF WILMINGTON
REALTY TRANSFER TAX

Validation Number

Amount of City Tax \$ 516.00

Cancelled by

Wilmington, Delaware
September 20, 2018

WHEREAS, pursuant to 1 Wilm. C. (Charter) § 1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose;
and

Sponsor:

WHEREAS, Wilm. C. § 2-621(a) authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

**Council
Member
Harlee**

WHEREAS, Wilm. C. § 2-621(c) provides that governmental agencies, governmental authorities organized pursuant to Title 22 of the Delaware Code, and non-profit organizations are exempt from the City's bid procedures and that upon the declaration of a property as approved for disposition by resolution of City Council, the Department of Real Estate and Housing may negotiate an agreement of sale, lease, exchange, or other transfer of such property owned by the City to any such governmental agency, governmental authority, or non-profit organization; and

WHEREAS, the City currently owns Alico Road, Wilmington, Delaware, being New Castle County Tax Parcel ID No. 26-035.4-0157 (the "Property"); and

WHEREAS, the City received a request from the State of Delaware for the acquisition of the Property to facilitate long range plans for the adaptive reuse of the Customs House (516 King Street) and improvements to the Leonard L. Williams Justice Center (500 King Street); and

WHEREAS, the Council, upon the recommendation of the Department of Real Estate and Housing, wishes to declare the Property surplus; and

WHEREAS, the Council further wishes to approve the disposition of the Property to the State of Delaware.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that Council hereby declares the Property to be surplus and approves the Property for disposition to the State of Delaware.

BE IT FURTHER RESOLVED that Council hereby authorizes the Mayor or his designee to execute any and all documents necessary to effectuate disposition proceedings for the Property, including any and all further undertakings and assurances that may be appropriate.

Passed by City Council,

Attest: _____
City Clerk

SYNOPSIS: This Resolution declares Alico Road (New Castle County Tax Parcel ID No. 26-035.4-0157) to be surplus and approves the property for disposition to the State of Delaware.

W0101829

**AN ORDINANCE TO AMEND CHAPTER 42 OF THE CITY CODE RELATING TO
THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES IN
THE PUBLIC RIGHTS OF WAY**

#4547

Sponsors:

**Council
President
Shabazz**

**Council
Member
Williams**

WHEREAS, providers of wireless telecommunications have expressed a desire to install small cell facilities in the public rights of way in order to expand the capacity of wireless networks in the city; and

WHEREAS, city council finds that enabling wireless telecommunications providers to provide high quality wireless communications service infrastructure to serve current and future needs of the city, its residents, visitors and businesses is beneficial to the city; and

WHEREAS, city council desires to balance the needs of wireless telecommunications providers with its duties to protect the public health, safety, and welfare of its residents; to avoid adverse visual and aesthetic impacts; and to manage the public rights of way, a physically limited resource; and

WHEREAS, city council finds it appropriate to clarify its policy with respect to agreements for use of city-owned or controlled structures within the public rights of way; and

WHEREAS, city council deems it necessary and appropriate to establish a fair and efficient process for the review and approval of requests to install wireless telecommunications facilities in the public rights of way that protects the health, safety, welfare and aesthetic concerns of the public, complies with all applicable laws, and permits the city to recover the costs associated with the review of such requests.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 42 of the City Code is hereby amended by amending Article XIII entitled Right-of-Way Management for Utility Service by renumbering subsections (b)-

(v) of section 42-704 as subsections (c)-(w), respectively, and by deleting the stricken language and adding the underlined language to read as follows:

Sec. 42-704. – Rules of construction; definitions.

- (b) Antenna means any transmitting or receiving device mounted on or within a tower or support structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, microwave, radio frequencies or other frequency energy waves, radar signals, telecommunications signals or other communications signals. As used in this Chapter only, "antenna" shall refer solely to antennas located within the public rights of way.

- ~~(w)~~(x) Public rights-of-way means the surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water within or in which the city now or hereafter holds any property interest or otherwise controls or manages, and which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating, and maintaining a communications facility. No reference herein, or in any license agreement, to a public right-of-way shall be deemed to be a representation or warranty by the city that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a licensee shall be deemed to acquire only those rights of use as the city may have the undisputed right and power to give.

- (y) Support Structure means any structure which can be used for the location of antennas.

- (z) Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, television, internet and similar wireless telecommunications purposes, including self-supporting lattice towers or monopole towers. The term includes the structure and its foundation, radio and television transmission towers, microwave towers, cellular telephone towers, common-carrier towers, alternative tower structures and the like.

- ~~(*)~~(aa) Transfer. The transfer of an interest in a franchise or license means the sale or transfer, directly or indirectly, of an existing or newly created equity interest

in the franchisee or licensee whether or not it may result in a transfer of control of the franchisee or licensee.

(bb) Underground areas are those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

(y)(cc) Underground facilities coordination manual is the manual, as it may be amended from time to time, in which those regulations promulgated by the commissioner necessary to carry out the purposes of this article shall be consolidated.

(z)(dd) Utility or public utility shall have the meaning set forth in Title 26, § 102(3) of the Delaware Code, as amended, provided that for purposes of this article utility also includes operators of cable television systems, open video systems, wireless telecommunications infrastructure and wireless service providers as well as every individual, partnership, association, corporation, joint stock company, agency or department of the State of Delaware or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within the State of Delaware, any natural gas, electric, water, wastewater, telecommunications service, system, plant or equipment.

(aa)(ee) Wireless means transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, microwave, or via radio frequencies.

(ff) Wireless Telecommunications Facilities Manual is the manual, as it may be amended from time to time, in which those regulations pertaining to the placement of wireless telecommunications facilities in the public rights-of-way shall be consolidated.

(bb)(gg) Wireless telecommunications facility is the capital, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, pedestals, and electronic equipment within the right-of-way used for the purpose of transmitting, receiving, distributing, providing, or offering wireless telecommunications, means wireless service infrastructure at a fixed location, whether for cell phone usage or other data transmission, consisting of the antennas, support structure, and related equipment, including but not limited to storage buildings, sheds or equipment cabinets.

~~(ee)(hh)~~ Wireless telecommunications infrastructure provider is every person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the city public right-of-way for the purpose of offering wireless telecommunication services (i.e.; transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data).

(ii) Wireless service provider is every person who provides wireless services to end users.

Sec. 42-706. – Authorization required; permit required.

(a) *Other authorizations required.*

(1) No person shall install, erect, hang, lay, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right-of-way in this city without first obtaining any required authorization from the city which may include a franchise, license, lease or any other form of authorization required under federal, state or local law.

(2) ~~A person must obtain the required authorization, for any portion of a system that occupies a portion of the public rights of way and for the provision of utility or video programming service, over a system located, in whole or in part, within the public right-of-way. No person may occupy the public rights of way in the city to provide video programming services, utility services, or infrastructure used in the provision of utility services without a written authorization of that occupancy issued by the city, or an authorization of occupancy of the rights of way lawfully issued by the State of Delaware that permits occupancy of the portion of the rights of way where a facility will be placed without further authorization from the city. Without limitation, a person occupies the rights of way if it owns, controls, operates or manages facilities in the public rights of way. Provided, subject to such conditions as the City may establish, an authorization may specifically permit a wireless infrastructure provider to allow another wireless service provider to own part of the wireless telecommunications facility without obtaining a separate authorization to occupy the public rights of way.~~

(3) An authorization from the city under Sec. 42-706(a)(2) may take the form of a franchise, license or other written consent issued by the city. A construction permit, excavation permit, building permit, encroachment permit, road cut permit, site plan approval, permit for construction of a wireless telecommunications facility, or similar type permits are not authorizations to occupy the public rights of way. The authorization to occupy the public rights of way shall specify the compensation to be paid to the City for occupancy of

the public rights of way, which compensation shall take into account the use of the public rights of way authorized. The person seeking the authorization shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon the person's request for the authorization.

(4) An authorization only authorizes occupancy in the manner and for purposes specified in the authorization.

(5) In addition to obtaining required authorizations, each person who will own or control wireless telecommunications facilities in the rights of way that are used in the provision of utility services for a fee shall register with the City, and provide and maintain an accurate list of its wireless facilities, their location, and size.

(6) For purposes of this section, utility services include, but are not limited to, information services, telecommunications services, and personal and private wireless services.

(b) *Construction permits required.*

(1) Except as provided in subsection (b)(3), no person shall install, erect, hang, lay, bury, draw, emplace, construct, or reconstruct any facility upon, across, beneath, or over any public right-of-way in this city without first obtaining a construction permit therefor from the city.

(2) Except as provided in subsection (b)(3), no person shall enter upon, across, beneath, or over any public right-of-way in this city to relocate or otherwise displace any facility that is located upon, across, beneath, or over any public right-of-way without first obtaining a construction permits therefor from the city, except to the extent otherwise permitted by applicable law.

(3) The following work may be conducted without obtaining a construction permit:

- a. Work activity that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of a wireless telecommunications facility. The Wireless Telecommunications Facilities Manual may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a construction permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety, to maintain the

character of a neighborhood or corridor, or to serve the purposes of this ordinance.

b. Work activity where facilities are relocated or where certain maintenance and/or modifications must be accomplished in coordination with a street construction or maintenance project by the city or DelDOT; however, the permit application system shall be used to notify the city of the work activity.

c. Routine operation or maintenance activities involving underground facilities but that do not include the excavation of paved street surfaces or disrupt or impede traffic in the traveled portion of a street. Examples of this work include, but are not limited to, work in underground manholes, regulators, valves, splice vaults, regulator pits, leak survey, leak investigation and classification, pumping pits or vaults.

d. Installation of a "carrier on wheels" for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities. This section does not relieve a person from the obligation to obtain other required permits (such as electrical permits) or to file appropriate traffic control plans.

e. Installation of a wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles.

(c) Any person, meeting the criteria of subsection (b)(3) above and therefore, not required to obtain a construction utility permit, must comply with all other relevant provisions of this article and the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual.

(d) Any person performing excavation on DelDOT maintained roads in the city limits is subject to state permit requirements. City of Wilmington construction permits are also required in these circumstances, however, the city permit fees for city permits issued solely for excavation in the public rights of way are waived.

(e) Wireless Telecommunications Facilities.

(1) Wireless telecommunications facilities requiring a permit under this Article shall meet the minimum requirements set forth in this ordinance and the Wireless Telecommunications Facilities Manual, in addition to the requirements of any other applicable law.

(2) The regulations in the Wireless Telecommunications Facilities Manual and decisions on applications for placement of wireless telecommunications facilities in the rights of way shall, at a minimum, ensure that the requirements of this section are satisfied, absent a showing that denial of an application would effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations. If an applicant establishes that denial of an application would result in an effective prohibition, the requirements of this ordinance and the Wireless Telecommunications Facilities Manual may be waived, but only to the minimum extent required to avoid the prohibition.

(3) The placement of wireless telecommunications facilities shall be subject to such other rights as the city possesses with respect to the public rights of way, and shall be installed, where approved, in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights of way and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights of way; and ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the public rights of way, or hinder the ability of the city or other government agencies to improve, modify, relocate, abandon or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights of way.

(4) Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive or is required to avoid an effective prohibition:

(a) Antennas located at the top of right of way support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;

(b) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.

(c) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, placed to avoid interfering or creating any hazard to any other use of the public rights of way, and located on one side of

the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

(d) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.

(e) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.

(5) The city, as a matter of policy, will negotiate agreements for use of city owned or controlled light standards and traffic signals in the public rights of way. The placement of wireless telecommunications facilities on those structures shall be subject to the agreement, and the provisions of subsections (2), (4), (7), and (8) herein and section 42-709(b)-(k) do not apply to such agreements. The agreement shall specify the compensation to the city for use of the structures. The person seeking the agreement shall additionally reimburse the city for all costs the city incurs in connection with its review of, and action upon, the person's request for an agreement.

(6) No permit and no agreement for use of city owned or controlled light standards and traffic signals, shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with Federal Communication Commission ("FCC") regulations governing radio frequency ("RF") emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease.

(7) No new support structures for wireless facilities shall be permitted in the public rights of way, and no wireless telecommunications facilities shall be permitted above-ground in areas where, under section 42-713(b), new aerial plant may not be constructed; provided that the city may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(8) No permit shall issue except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility, or wireless infrastructure providers that have contracts with wireless service providers requiring the service provider to immediately use the proposed wireless telecommunications facility.

Sec. 42-708. – Administration.

- (a) The commissioner or his or her designee shall:
- (1) Issue all construction permits and inspect the work under each;
 - (2) Determine and collect all fees owed under this article;
 - (3) Publish from time to time a schedule of application and hearing fees, which shall be designed to recover the city's costs in processing applications for permits hereunder and may provide specially for hearing fees in those cases where hearings are required; and
 - (4) From time to time amend the provisions of the underground facilities coordination manual, which shall include but not necessarily be limited to provisions concerning:
 - a. Design requirements;
 - b. Permit procedure and requirements;
 - c. Forms of permits and other documents;
 - d. Insurance and other requirements for the protection of the city; and
 - e. Permit-related fees.
- (5) From time to time amend the provisions of the Wireless Telecommunications Facilities Manual, which shall include but not necessarily be limited to provisions concerning:
- a. design requirements;
 - b. permit procedures and requirements;
 - c. forms of permits and other documents;
 - d. insurance and other requirements for the protection of the city;
 - e. such conditions as are necessary to protect the public health, safety and welfare, and to ensure the completion, safety, workmanship and restoration of the work and/or work area so permitted;

f. govern requirements regarding relocation at the expense of the permittee in the event that the privately owned facility is found to conflict with future public facilities or with access to repair, replace, or maintain existing or future public facilities;

g. ensure permittees have obtained and are maintaining all required consents, licenses, or franchises from the city with respect to the facilities that are the subject of the permit; and

h. otherwise further the city's efforts to realize the objectives described in this Article.

(6) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.

(7) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including entering into agreements to mutually extend the time for action on an application.

Sec. 42-709. – Permit procedures.

(a) An application for a permit shall be submitted in the format and manner specified by the department in Appendix B of the Underground Facilities Coordination Manual or the relevant section of the Wireless Telecommunications Facilities Manual, as applicable.

(b) For wireless telecommunications facilities, as part of the application, the applicant shall submit an initial fee and must agree to pay all costs reasonably incurred by the city in reviewing the application. Fees shall be set forth in the Wireless Telecommunications Facilities Manual. Fees set forth in the Wireless Telecommunications Facilities Manual:

(1) shall be designed to recover the costs the city expects to incur in reviewing applications for wireless telecommunications facilities, including costs associated with outside consultants; and

(2) shall be reviewed periodically and, may be increased or decreased based upon the costs the city expects to incur as a result of such review. The first review shall commence on or after the first anniversary of the effective date of this ordinance.

(c) For wireless telecommunications facilities, the applicant and the persons on whose behalf the work is being performed, or who will own or control any portion of the facilities that will be installed pursuant to the permit, shall be jointly responsible

for submitting all necessary information to the city and for ensuring the accuracy of any information submitted.

~~(b)~~(c) Requests for waivers from any requirement of this section shall be made in writing to the commissioner or his or her designee. The commissioner may grant a request for waiver if the utility (or a contractor working for the utility) demonstrates to the commissioner that, notwithstanding the issuance of a waiver, the department will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

~~(e)~~(d) If the activity for which the permit is sought will include or require the cutting or any other manner of construction or obstruction on a city sidewalk, the applicant must file a copy of the permit application form in the offices of the Department of Licenses & Inspections in the Louis L. Redding City/County Building, 3rd Floor, 800 N. French St., Wilmington, Delaware 19801. Applications for placement of a wireless telecommunications facility in the public rights of way must be filed with the Department of Public Works in the Louis L. Redding City/County Building, 6th Floor, Wilmington, DE 19801.

~~(d)~~(e) Permit application forms that are not complete or do not include required fees may be rejected. No deadline applicable to the department associated with the filing of a complete permit application form shall begin to run until such time as a complete application form has been filed by applicant. Provided that, for personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, local and federal law. If such an application is incomplete, it may be rejected by a written order specifying the material omitted from the application, or the city may notify the applicant of the material omitted and provide an opportunity to submit the missing material.

~~(e)~~(f) If the submittal of plans or other documents is required, the plans and/or documents shall be legible and of a scale that accurately and clearly presents the detail of the proposed work. Plans or documents not meeting these requirements may be rejected.

~~(f)~~(g) If the submittal of plans, requests or other documents is required, a utility may substitute electronic data transfer under the procedures set forth in the Underground Facilities Coordination Manual or the Wireless Telecommunications Facilities Manual, as applicable.

~~(g)~~(h) The commissioner or his or her designee may approve, conditionally approve, or deny an application for a permit.

~~(h)~~(i) If an application is approved, ~~the commissioner shall issue~~ a permit shall be issued to the applicant, subject to appeal as provided herein.

(i)(j) If an application is conditionally approved, the commissioner or his or her designee may condition the permit with specified requirements that preserve and maintain the public health, safety, welfare, and convenience, and ensure compliance with provisions of this Code and applicable law.

(i)(k) If an application is denied, the commissioner or his or her designee shall advise the applicant by a written, electronic, or facsimile communication of the basis for the denial.

(l) No action may be taken pursuant to an approved permit unless and until all delinquent amounts owed by the applicant to the city are fully paid.

(m) Any applicant adversely affected by an action of the commissioner's designee with respect to a wireless telecommunications facility may appeal the action to the commissioner by filing a notice of appeal with the department, and identifying the actions that are being appealed. The appeal must be received within seven (7) business days of the action appealed. The commissioner may decide the appeal based on the information submitted to the department, or receive additional information and conduct such public hearings as appropriate. In determining the procedures to be followed in a particular case the commissioner shall take into account any applicable law governing the timing for a final decision. The commissioner may enter into agreements or grant requests for extensions of time (including the time for filing an appeal), provided the extensions do not prevent timely final action on an application under applicable law. No decision on appeal shall be final until a written decision issues.

Sec. 42-713. – Construction.

(a) *Placement of facilities.* All facilities placed by an owner in public streets within the city shall be so located as to minimize interference with the proper use of public streets and other public ways and places, and to minimize interference with the rights or reasonable convenience of property owners who adjoin any of these public streets or other pre-existing utilities in the right-of-way.

(b) *Location.* Except as permitted under section 42-706(e)(7), ~~No~~ holder of any construction permit for any facility shall erect new aerial plant in or on a public right-of-way in which one or more public utility providers has placed its lines underground or in an area where the city by ordinance has forbidden new aerial plant to be constructed or existing aerial plant to be maintained.

(c) *Construction and location details.* The city reserves the right to review the detailed location and design of all utility installations, adjustments, or relocations in the street right-of-way for compliance with these procedures and issue permits for proposed utility work pursuant to the provisions of this article.

(d) All utilities and contractors working in the City of Wilmington shall comply with all applicable requirements of 26 Del. C. ch. 8, also known as the Underground Utility Damage Prevention and Safety Act.

(e) Each holder of any construction permit for any facility shall, upon written notice from the city, reasonably in advance, promptly relocate its lines at its own expense to accommodate realignment or construction of public streets, sidewalks, curbs, drains, sewers, and public improvements of any sort.

(f) *Obstructions in public streets.*

(1) A person who places or maintains an obstruction in, on, over, under or through a city public street shall promptly shift, adjust, accommodate, or remove the obstruction on reasonable notice from the city.

(2) If a person fails or refuses to shift, adjust, accommodate, or remove an obstruction after reasonable notice, the commissioner may charge the person having or maintaining the obstruction for the cost of performing the work.

(g) *Restoration.*

(1) In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or any public or private property, the owner or permit holder shall, in a manner acceptable to the city, replace, repair, and restore all paving, sidewalk, driveway or surface of any public street or alley disturbed, or public or private property to as good condition as existed prior to the commencement of such work.

(2) Such restoration shall be at the owner's or permit holder's cost and expense, except to the extent otherwise required by applicable law.

(3) *Warranty of work.* All paving restoration work must be guaranteed and maintained for a period of three years following notice of completion (unless such lesser time period shall be specifically stated in the permit holder's franchise, license or consent from the city authorizing occupancy of the public rights of way agreement with the city). Such warranty shall cease immediately upon disturbance of the work by others including, but not limited to, other utilities, City of Wilmington and/or State of Delaware agencies, including agents and contractors of these entities.

(4) In the event that the owner or permit holder fails to complete any work required for the repair, protection, or restoration of the public rights-of-way, or any other work required by law or ordinance, within the time specified by and to the reasonable satisfaction of the city, the city, following notice and an opportunity to cure, may cause such work to be done. In such a case, the owner or permit holder shall reimburse the city the cost thereof within 30 days after receipt of an itemized list of such costs, or the city may recover such

costs through any bond or other security instrument provided by the owner or permit holder, except to the extent otherwise required by applicable law.

(h) *Notice.*

(1) The permit holder shall not render any road impassable without previous notification to the City of Wilmington Police Department in accordance with the requirements and time frames established in the underground facilities coordination manual and the application.

(2) The permit holder shall notify the department within five business days upon completion or upon cancellation of the permitted work.

(3) Failure to provide such notice shall be grounds for suspension of the work until such notice is provided. The utility or contractor shall sufficiently address concerns of emergency personnel such that public safety is not compromised.

(i) *Special considerations.*

(1) *New surface considerations.* Utility excavation work that requires disturbance of city street surfaces that have been resurfaced during the past five years shall be limited to emergencies, installation of facilities to serve new customers or increased customer need, work required by regulation, work required in the interest of public safety or environmental protection or work that utilizes construction methods approved by the department of public works that will minimize the damage to the street surface.

(2) *Winter considerations.* It is desirable to minimize excavation of city streets between December 1 and March 1 due to the possibility that proper restoration material availability may be limited. Work that requires disturbance of such surfaces shall be limited to emergencies, installation of facilities to serve new customers or increased customer need, work required by regulation, work in advance of paving or work required in the interest of public safety or environmental protection. If weather conditions prevent the surface repair to be accomplished in accordance with the requirements of the underground facilities coordination manual, a temporary repair shall be made, and periodically maintained, using acceptable cold weather patching material. This temporary repair shall be completely removed when weather conditions permit and "hot mix" material as specified in the underground facilities coordination manual is available for the installation of a permanent surface repair.

(j) Utility installations in the right-of-way area of city streets are to meet or exceed all of the requirements listed in the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual, as applicable.

(k) *Clearances between utilities.* Vertical and horizontal clearances between utilities must conform to the utility codes set forth in the underground facilities coordination manual and the Wireless Telecommunications Facilities Manual.

(l) *Excavation warnings and barriers.* Any person causing an opening or obstruction in the public rights-of-way shall effectually guard the public against all accidents until the restoration or removal of such opening or obstruction by erecting and maintaining fences or barriers, keeping sufficient lights, lanterns and other warning devices during periods of dusk or darkness and taking any other necessary precautions.

(m) *Exceptions to requirements.*

(1) Any request for deviation from the requirements described in this article due to extreme hardship shall be submitted in writing to the department. The request should include full justification supporting the claimed hardship condition. The department will promptly review the claim and provide a recommendation that will be forwarded to the commissioner for final action.

(2) The city recognizes and encourages innovative techniques and new technologies in the removal and restoration of street pavements and rights-of-way. To that end, the commissioner may waive or revise certain specific requirements of this policy, when such action would effectively advance a new technology and/or state of knowledge. The burden of testing or otherwise demonstrating that a new technique is likely to be effective rests with the requestor.

(n) *Other related regulations.*

(1) All utilities shall comply with the street safety, marking, and other requirements of the city's "Underground Facilities Coordination Manual" and the "Wireless Telecommunications Facilities Manual."

(2) Underground utilities must consider safe trenching practices when preparing their designs and constructing their facilities. Both utilities and their contractors must comply with all OSHA (Occupational Safety and Health Administration) requirements while working in rights-of-way.

(3) Contractors must insure that work or equipment placed in proximity to overhead high voltage lines complies with the State of Delaware Overhead High-Voltage Line Safety Act.

(4) Communications Act of 1934, as amended, 47 USC 151 et seq.

SECTION 2. This Ordinance shall be deemed effective as of August 1, 2018.

First Reading.....June 21, 2018

Second Reading.....June 21, 2018

Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____

City Clerk

Approved this ____ day of _____, 2018.

Mayor

SYNOPSIS: This Ordinance amends Chapter 42 of the City Code by establishing procedures relating to the authorization, permitting and regulation of wireless telecommunications facilities in the public rights of way.

Wilmington, Delaware
September 20, 2018

#

Sponsor:

**Council
Member
Turner**

WHEREAS, pursuant to Wilmington Charter Section 8-205, the City may sell or exchange any real estate belonging to the City or grant any license, easement, right-of-way, or other interest over or in such real estate with authority by general ordinance and later resolution from Council to do so; and

WHEREAS, City Code Section 2-626 provides that the Council shall by resolution approve the grant of any utility license, easement, or right-of-way by the Department of Public Works; and

WHEREAS, on July 8, 2004, City Council passed a resolution approving a license agreement (the "License Agreement") between the City and Omnipoint Communications Enterprises, L.P. ("Omnipoint") which permitted Omnipoint to install and operate communications antennas on and a control cabinet at the base of the City's water tower on or near New Castle Avenue (Route 9), sometimes referred to as Paper Place, Wilmington, Delaware; and

WHEREAS, T-Mobile Northeast, LLC ("T-Mobile") is the successor-interest to Omnipoint with respect to the License Agreement; and

WHEREAS, the License Agreement is set to expire on June 30, 2019; and

WHEREAS, the parties desire to amend the License Agreement (a copy of the amendment, in substantial form, is attached hereto as Exhibit "A") to: 1) extend the term of the License Agreement for an additional five (5) years commencing on July 1, 2019; 2) increase the license fee payable by T-Mobile to the City under the License Agreement to \$49,000 per year with an increase of four percent (4%) annually commencing on July 1,

2019; and 3) provide T-Mobile with an option to renew the License Agreement for two (2) additional terms of five (5) years thereafter.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby authorizes and approves the "First Amendment to License Agreement" between the City of Wilmington and T-Mobile Northeast, LLC, a copy of which, in substantial form, is attached hereto as Exhibit "A", and the Mayor, or his designee, and the City Clerk are hereby authorized to execute as many copies of said "First Amendment to License Agreement" as may be necessary.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves the First Amendment to a License Agreement between the City and T-Mobile Northeast, LLC ("T-Mobile"), which permits T-Mobile to install and operate communications antennas on and a control cabinet at the base of the City's water tower located on or near New Castle Avenue (Route 9), sometimes referred to as Paper Place, Wilmington, Delaware. The First Amendment will: 1) extend the term of the License Agreement for an additional five (5) years commencing on July 1, 2019; 2) increase the license fee payable by T-Mobile to the City under the License Agreement to \$49,000 per year with an increase of four percent (4%) annually commencing on July 1, 2019; and 3) provide T-Mobile with an option to renew the License Agreement for two (2) additional terms of five (5) years thereafter.

W0101580

EXHIBIT A

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below, is by and between The City of Wilmington, having a mailing address of Attn: Commissioner of Public Works, City of Wilmington, 800 French Street, 6th Floor, Wilmington, DE 19801 ("**Licensor**") and T-Mobile Northeast LLC, a Delaware limited liability company, having a mailing address of 12920 SE 38th Street, Bellevue, WA 98006 ("**Licensee**").

WHEREAS, Licensor and Licensee, or their predecessors-in-interest, entered into that certain License Agreement dated July 8, 2004, whereby Licensor licensed to Licensee certain Premises, therein described, located at or near New Castle Avenue, Wilmington, DE 19720 ("**Agreement**"); and

WHEREAS, Licensor and Licensee desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Licensor and Licensee desire to adjust the license fee in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Licensor and Licensee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. Extension of Term. In addition to the extension terms presently set forth in the Agreement at Section 2.2, the parties hereby agree to add three (3) additional extension terms of five (5) years each. Accordingly, commencing as of July 1, 2019, the Term will automatically renew for a five (5) year period upon the same terms and conditions of the Agreement except for the adjustment of fees described below. Licensee shall have the option to renew the term for two (2) additional five (5) year terms upon the same terms and conditions set forth in the Agreement except for the adjustment of fees described below unless Licensee notifies Licensor in writing of Licensee's intention not to renew the Agreement at least ninety (90) days prior to the expiration of the existing Agreement.

2. License Fee. Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

3.1 Commencing as of July 1, 2019, the license fee payable under the Agreement shall be \$49,000 per year, subject to an annual increase thereafter in the amount of four

percent (4%) over the license fee for the immediately preceding year, and any further adjustments as provided in the Agreement.

3. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement (and any other amendment thereto) and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the dates set forth below.

“LICENSOR”

City of Wilmington

By: _____

Name: _____

Title: _____

Date: _____

“LICENSEE”

T-Mobile Northeast LLC, a Delaware
limited liability company

By: _____

Name: _____

Title: _____

Date: _____

T-Mobile Contract Attorney, as to form

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

LICENSEE ACKNOWLEDGEMENT

State of Washington

County of King

This instrument was acknowledged before me on _____ (date) by _____
(name(s) of person(s)) as _____ (type of authority, e.g., officer, trustee,
etc.) of _____ (name of party on behalf of whom instrument
was executed).

_____ (signature of notarial officer)

Seal

title and rank

my commission expires: _____

LICENSOR ACKNOWLEDGEMENT

State of Delaware

County of _____ (Town/City)

This instrument was acknowledged before me on _____ (date) by _____
(name(s) of person(s)) as _____ (type of authority, e.g., officer, trustee,
etc.) of _____ (name of party on behalf of whom instrument
was executed).

_____ (signature of notarial officer)

Seal

title and rank

my commission expires: _____