

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)-

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.

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

(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

(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;

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.

(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

(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.