

ORDINANCE NO.: 2019-17

FIRST READING FEBRUARY 25, 2019

INTRODUCED BY: MIKE CARROLL

SECOND READING MARCH 11, 2019

THIRD READING APRIL 8, 2019

AN ORDINANCE AMENDING CHAPTER 1012 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF SOUTH RUSSELL "USE OF PUBLIC WAYS AND DESIGN GUIDELINES FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES" AND DECLARING AN EMERGENCY.

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

WHEREAS, Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 to provide, among other things, that municipalities must permit wireless service providers, cable providers, video service providers, and their designated agents to attach small cell wireless facilities to municipally owned support structures located in the right-of-way, including on utility poles, traffic signals, and street lights and to construct, maintain, modify, operate, or replace a wireless support structure in the right-of-way; and

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

WHEREAS, Sub. H.B. 478 also revised ORC Chapter 4939 to authorize municipalities to adopt and enforce design guidelines applicable to small cell infrastructure deployments, provided that the guidelines must be reasonable, and written, and based upon objective criteria regarding (1) the location of ground-mounted small cell facilities; (2) the location of a small cell facility on a pole; (3) the appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of wireless support structures including height limitations otherwise consistent with the statute; and

WHEREAS, this Council on July 9, 2018 adopted Ordinance No. 2018-30 creating a new Chapter 1012 of the Codified Ordinances of the Village of South Russell to regulate the use and occupancy of the public rights of way within the Village for small cell wireless facilities and support structures and creating design guidelines applicable to small cell wireless facilities and support structures pursuant to Sub. H.B. 478; and

WHEREAS, on September 27, 2018, the Federal Communications Commission released a Declaratory Ruling and Order known as the “Small Cell Order” that limits and revises state and local authority to manage and regulate certain small cell wireless installations within public rights-of-way nationwide, including local fees associated with such management and regulation, as well as the extent to which such regulations may deal with local aesthetic concerns, and preempts inconsistent state and local regulations; and

WHEREAS, the FCC in December 2018 denied local government-filed motions to stay the effective date of the Small Cell Order, which has been challenged in Court, such that the Order will generally take effect on January 14, 2019 and the FCC appeared to permit an additional 90 days or until April 14, 2019 to allow localities to establish standards consistent with the FCC’s Small Cell Order; and

WHEREAS, this Council desires to amend its regulations applying to small cell facilities, new wireless support structures, and the persons and entities who desire to construct, operate, and maintain such facilities in the Village and its design guidelines applying to small cell facilities, including wireless support structures found in Chapter 1012 of the Codified Ordinances of the Village of South Russell , “Use Of Public Ways and Design Guidelines For Small Cell Wireless Facilities And Wireless Support Structures” to lawfully exercise municipal authority on this subject in a manner that is consistent with Ohio Revised Code Chapter 4939 and the FCC’s Small Cell Order.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of South Russell, Geauga County, State of Ohio, that:

Section 1. Chapter 1012 “Use Of Public Ways and Design Guidelines For Small Cell Wireless Facilities And Wireless Support Structures” of the Codified Ordinances of the Village of South Russell be amended to read as follows:

**“CHAPTER 1012
USE OF PUBLIC WAYS AND DESIGN GUIDELINES FOR SMALL
CELL WIRELESS FACILITIES AND WIRELESS SUPPORT
STRUCTURES**

1012.01 OVERVIEW AND PURPOSE; DEFINITIONS

- (a) The purpose of this Chapter is to:
 - (1) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the Village’s Right-of-Way to protect the health, safety, and welfare of the citizens of the Village;

- (2) Preserve the character of the Village, including the Village’s residential and commercial neighborhoods;
 - (3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures;
 - (4) Comply with, and not conflict with or preempt, all applicable state and federal law; and.
 - (5) Facilitate new development of small cell Facilities and advanced wireless communications within the Village in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.
- (b) For the purpose of this Chapter, and the interpretation and enforcement hereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:
- (1) “Applicant” means any person or entity who submits an Application pursuant to this Chapter.
 - (2) “Application” means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the Village to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
 - (3) “Accessory Equipment” means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs.
 - (4) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
 - (5) “Design Guidelines” means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established in Chapter 1012.
 - (6) “Eligible Facilities or Eligible Support Structure Request” means any request for modification of an existing support structure or base station that does not *substantially change* the physical dimension of such support

structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:

- (i) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than six (6) feet;
- (ii) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than (4) cabinets, whichever is less;
- (iii) The installation for any new ground-mounted equipment cabinets if there are not existing ground-mounted equipment cabinets;
- (iv) Any excavation or deployment outside of the current site of the Facility;
- (v) Removal of any concealment elements of the Facilities or the Wireless Support Structure; and
- (vi) Any change that does not comply with this Chapter, the Design Guidelines set forth in Chapter 1012, or state or federal law and regulations.

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

- (7) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (8) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
 - (i) Operators;
 - (ii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and

- (iii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to O.R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.
- (9) “Operator” means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.
- (10) “Public Way” or “Right-of-Way” means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the Village or other public entity or political subdivision.
- (11) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
- (12) “Small Cell Facility” means a wireless facility that meets both of the following requirements:
 - (i) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and
 - (ii) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
 - (iii) A “Small Wireless Facility” is a type of Small Cell Facility (A) in which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume, and (B) where such antenna is associated with a structure (a) 50 feet or less in height, including the antenna, or (b) that is not more than 10 percent taller than adjacent structures, or (c) is not

extended in height by more than 10 percent or to a height exceeding 50 feet, whichever is greater, and (C) the definition of “Small Wireless Facilities” found in the FCC’s Small Cell order is also otherwise satisfied.

- (13) “Small Cell Use Permit” means the permit granted by the Village authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.
- (14) “Underground Area” means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structure and facilities owned by the Village or a transit authority, are located underground.
- (15) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, “Wireless Support Structure” excludes the following except in connection with a Small Wireless Facility, in which case the following are not excluded:
 - (i) A utility pole or other facility owned or operated by a municipal electric utility; and
 - (ii) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.
- (16) “Village” means the Village of South Russell, Ohio.

1012.02 CONSENT REQUIRED

- (a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the Building Inspector in accordance with the requirements in this Chapter, Design Guidelines, O.R.C. Chapter 4939, and all applicable state and federal laws and regulations.
- (b) Applicants are strongly encouraged to contact the Building Inspector and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the Village.
- (c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and

occupy the Public Ways for the limited purposes and term stated in the permit, this Chapter, and the Design Guidelines. Further, no Small Cell Use Permit shall be construed as any warranty of title.

1012.03 PERMIT APPLICATION TYPES

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

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

1012.04 CONSOLIDATED CONSENT APPLICATIONS

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

consolidated application pursuant to Section 1012.04(a) shall not apply to applications for Small Wireless Facilities.

1012.05 APPLICATION FEE

- (a) The fee for each application is Two Hundred Fifty Dollars (\$250.00). The Village shall adjust the fee by ten percent (10%) every five years, rounded to the nearest Five (5) Dollars, beginning in the year 2023.
- (b) An Application shall not be deemed complete until the fee is paid.
- (c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application.

1012.06 ATTACHMENT FEE

- (a) In addition to the Application Fee, an annual fee shall be paid to the Village for each Small Cell Facility attached to a municipally-owned Wireless Support is Two Hundred Dollars (\$200.00). The Village shall adjust the attachment fee by ten percent (10%) every five years, rounded to the nearest five (5) dollars, beginning in the year 2023.
- (b) The first-year attachment fee shall be paid when the collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the collocation is complete.

1012.07 REQUIRED APPLICATION MATERIALS

The Applicant must submit the following documentation with each Application.

- (a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.
- (b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.
- (c) Fully dimensional scaled site plan (scale no smaller than one inch equals forty (40) feet). The site plan must include:
 - (1) The exact proposed location of the Facilities within the Right-of-Way;
 - (2) All existing Facilities with all existing transmission equipment;
 - (3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water

drainage utilities in the Public Way within one hundred (100) feet surrounding the proposed Facilities.

- (4) The legal property boundaries within one hundred (100) feet surrounding the proposed Facilities;
 - (5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within one hundred (100) feet surrounding the proposed Facilities; and
 - (6) Access and utility easements within one hundred (100) feet surrounding the proposed Facilities.
- (d) Elevation drawings (scale no smaller than one inch equals ten (10) feet) of the proposed Facilities.
- (e) Evidence that the Applicant provided notice by mail to all property owners within 300 feet of the proposed Facilities prior to submitting the Application. The notice shall include:
- (1) Name of the Applicant;
 - (2) Estimated date Applicant intends to submit the Application;
 - (3) Detailed description of the proposed Facilities and the proposed location; and
 - (4) Accurate, to-scale photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals forty (40) feet.
- (f) A preliminary installation/construction schedule and completion date.
- (g) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed small cell equipment.
- (h) Analysis demonstrating that the proposed Facilities do not interfere with the Village's public safety radio system, traffic and emergency signal light system, or other Village safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing Village infrastructure and Applicant's proposed Facilities.
- (i) A landscape plan that demonstrates screening of proposed small cell equipment.

- (j) Drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:
 - (1) The manufacturer's name and model number;
 - (2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and
 - (3) The noise level generated by the equipment, if any.
- (k) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.
- (l) If the Applicant intends to place Small Cell Facilities and Small Cell Equipment on a Wireless Support Structure that is not owned by the Village, then the Applicant shall provide written confirmation of permission to use the Wireless Support Structure upon which the Small Cell Facilities and Small Cell Equipment will be located.

1012.08 APPLICATION REVIEW

- (a) Applications shall be evaluated in the timeframes as follows:
 - (1) Type 1 Applications: 60 days
 - (2) Type 2 Applications: 90 days, except that for Small Wireless Facilities, the timeframe for a Type 2 Application shall be 60 days.
 - (3) Type 3 Applications: 120 days, except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be 90 days.
- (b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant will be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete, as described below:
 - (1) To toll the time period for incompleteness, the Village must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application; except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.

- (A) In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to subsection (b)(1), the time period set forth in subsection (a) shall be deemed never to have started running at all until Applicant provides a supplemental submission.
- (2) The time period set forth in subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the Village's notice of incompleteness, but may be tolled again if the Village notifies the applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the Village of the deficiencies in a supplemental submission tolls the time period set forth in subsection (a) until the Applicant supplies the specified information.
- (c) The timeframes set out in subsection (a) may also be tolled by mutual agreement between the Applicant and the Village. The timeframes in subsections (a)(2) and (a)(3) may also be tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of subsections (c)(1) and (c)(2) below do not apply:
 - (1) If the Village receives between fifteen (15) and thirty (30) applications in a thirty (30) day period, then the Village may toll the evaluation for an additional twenty (20) days.
 - (2) If the Village receives more than thirty (30) applications in a thirty (30) day period, then the Village may toll the evaluation for an additional fifteen (15) days for every fifteen (15) applications received.
 - (3) By mutual agreement between the Applicant and the Village.
 - (4) When an Applicant submits an underground area waiver pursuant to Section 1012.13(d) of the Codified Ordinances, in which case the Village may toll the evaluation for an additional fourteen (14) days.
- (d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 1012.23, then the Building Inspector may resolve the conflict in any reasonable and nondiscriminatory manner.
- (e) If a request for consent is denied, the Village shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:
 - (1) Failure to provide information required under Section 1012.07;

- (2) Failure to comply with Design Guidelines set forth in this Chapter 1012;
- (3) Failure to provide financial surety pursuant to Section 1012.15;
- (4) Failure to remove abandoned Facilities as required under Section 1012.12;
- (5) Conflict with the historic nature or character of the surrounding area;
- (6) Conflict with planned future improvements in the Right-of-Way; and
- (7) Failure to comply with generally applicable health, safety, and welfare requirements.

1012.09 PERMITTING PROCESS, DURATION, AND TERMINATION

- (a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the Village has granted the Applicant consent to occupy the Right-of-Way.
- (b) A Small Cell Use Permit issued to an Operator shall have duration of no longer than ten (10) years. Permits may be renewed for five year terms.
- (c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of ten (10) years or the duration of the Facilities Operator's agreement with a wireless service provider provided pursuant to Section 1012.07 (k), whichever is shorter.
- (d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with all applicable laws and regulations.
- (e) Pursuant to O.R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within 180 days of issuance of the permit, unless the delay is caused by:
 - (1) Make-ready work for a municipally-owned Wireless Support Structure; or
 - (2) Due to the lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within sixty days after the Small Cell Use Permit was granted.

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

- (f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the

new Wireless Support Structure within 180 days of issuance of the Small Cell Use Permit.

- (g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 1012.10, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual attachment fee was due.
- (h) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60-days written notice to the Village.
- (i) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all Village-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.
- (j) The Village shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit.

1012.10 ANNUAL REGISTRATION

- (a) All Facilities Operators with consent to occupy or use the Right-of-Way shall register with the Village each calendar year between January 1 and January 31 on a form provided by the Village. The form will allow the Facilities Operator to indicate when there is no change in the information required, and when such indication is submitted, previously provided information will be considered current and will be relied upon. Facilities Operators who obtain consent to occupy the Right-of-Way after September 30 of any year need not file an Annual Registration for next calendar year.
- (b) The purpose of registration under this Section is to:
 - (1) Compile, update and supplement the Village's database so that the Village has accurate and current information concerning the Facilities Operators that own or operate Facilities in the Village/Village's public Right-of-Way;
 - (2) Assist the Village in monitoring the usage of the public Right-of-Way in order to ensure that the public receives the maximum possible benefit from that use, and the use is consistent with the best management and care of the public Right-of-Way;
 - (3) Assist the Village in the collection and enforcement of any municipal taxes, fees, or other charges that may be due the Village; and
 - (4) Assist the Village in monitoring compliance with local, state and federal laws.

- (c) Registration forms will be provided by the Village and shall require the following information:
- (1) Any material changes to the information the Facilities Operator provided to the Village in the Application for Small Cell Use Permit including, but not limited to:
 - (i) The identity, legal status, and federal tax identification number of the Facilities Operator, including any affiliates or agents.
 - (ii) The name, address and telephone number of the local officer, agent or employee responsible for the accuracy of the Facilities Operator's registration statement and available at all reasonable times to be notified in case of emergency.
 - (iii) Evidence that the Facilities Operator is in compliance with the insurance, indemnity and financial surety requirements pursuant to this Chapter.
 - (iv) Such other information as the Building Inspector may reasonably require.
 - (d) In addition to the annual registration requirement, each Facilities Operator shall keep all required registration information current at all times and shall provide the Village with notice of changes to the required information within fifteen (15) days following the date on which the Facilities Operator has notice of the need for such change.

1012.11 NONCONFORMING FACILITIES

- (a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this Chapter but that do not comply with the requirements of this Chapter may remain in the Right-of-Way but shall be considered a nonconforming facility.
- (b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant to Section 1012.10 within ninety (90) days of the date this ordinance takes effect.
- (c) If a nonconforming facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this Chapter and state and federal law and regulations.

1012.12 ABANDONED AND DAMAGED FACILITIES

- (a) A Facilities Operator shall provide written notice to the Village of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within three hundred sixty five (365)

days from the date the use was discontinued, the Facilities shall be considered a nuisance and the Village may remove the Facilities at the expense of the Facilities Operator.

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

1012.13 INSURANCE REQUIREMENTS

- (a) As a condition of the Village's consent to occupy the Right-of-Way, a Facilities Operator must secure and maintain the following liability insurance policies insuring both the Facilities Operator and the Village, and its elected and appointed officers, officials, agents and employees as additional insureds:

- (1) Comprehensive general liability insurance with limits not less than:

- (i) Five Million Dollars (\$5,000,000.00) for bodily injury or death to each person;
- (ii) Five Million Dollars (\$5,000,000.00) for property damage resulting from any one (1) accident; and
- (iii) Five Million Dollars (\$5,000,000.00) for all other types of liability.

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

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

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

- (b) Each such insurance policy shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the Village, by registered mail, of a written notice addressed to the Building Inspector of such intent to cancel or not to renew.”

- (c) Within sixty (60) days after receipt by the Village of said notice, and in no event later than thirty (30) days prior to said cancellation, the Facilities Operator shall

obtain and furnish to the Village replacement insurance policies meeting the requirements of this subsection.

- (d) Upon written application to, and written approval by the Fiscal Officer, a Facilities Operator may be self-insured to provide all of the same coverages as listed in this section; except that all coverages for Worker's Compensation shall be in compliance with State law. No approval for self-insurance shall be given until the Village's Fiscal Officer has made a complete review of the Facilities Operator's financial ability to provide such self-insurance and notifies the Fiscal Officer that such review has been completed. As part of the review process, the Fiscal Officer may require, and the self-insurance applicant shall provide, any and all financial documents necessary to make a valid determination of the applicant's ability to meet the needs of this Chapter.

1012.14 INDEMNIFICATION

A Facilities Operator shall indemnify, protect, defend, and hold the Village and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Operator who owns or operates Small Cell Facilities and wireless service in the Right-of-Way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining Facilities in the Right-of-Way.

1012.15 FINANCIAL SURETY

- (a) Each Facilities Operator must procure and provide to the Village a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and Chapter 4939. The financial surety must be in an amount sufficient to cover the cost of removal of all Facilities owned or operated by the Facilities Operator.
- (b) The Village may, in its sole discretion, draw on the financial surety to remove abandoned Facilities, remove or repair damaged Facilities, or to repair damage to any Village property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within ten (10) business days after Village notifies the Facilities Operator that it has drawn on the financial surety.

1012.16 RESERVED SPACE

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

1012.17 REMOVAL OR RELOCATION OF FACILITIES

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

1012.18 NOTICE OF WORK

- (a) A Facilities Operator shall notify the Building Inspector of all nonemergency work within ten (10) calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the Village.

1012.19 CONSTRUCTION PERMIT

- (a) Facilities Operators are required to obtain a construction permit pursuant to Chapter 1010 prior to commencing any of the following activities:
 - (1) Collocation of small cell equipment on a Wireless Support Structure;
 - (2) Replacement, modification, repair, or maintenance of small cell equipment;
 - (3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
 - (4) Any excavation of the Right-of-Way in connection with the activities described in this subsection (a).
- (b) The construction permit fee shall be the fee set forth in Chapter 1010.

1012.20 EXCAVATION PERMIT

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Chapter 1010.

1012.21 SMALL CELL DESIGN GUIDELINES; OVERVIEW AND PURPOSE, DEFINITIONS.

- (a) The purpose of these Design Guidelines is to:
 - (1) Protect the health, safety, and welfare of the citizens of the Village;
 - (2) Preserve the character of the Village, including the Village's residential and commercial neighborhoods;
 - (3) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities; and
 - (4) Comply with, and not conflict with or preempt, all applicable state and federal laws.

1012.22 GENERAL STANDARDS

- (a) Facilities shall not be installed unless the Facilities are compliant with these Design Guidelines, Chapter 1012 of the Codified Ordinances and any Application requirements, and all applicable local, state, and federal laws.
- (b) A Facilities Operator shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in an Application for a Small Cell Use Permit.
- (c) All work shall be performed in a professional manner consistent with the highest standards of workmanship.
- (d) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.
- (e) Facilities shall not be installed in any location that causes any interference with the Village's public safety radio system, traffic and emergency signal light system, or other Village safety communications systems or system components.
- (f) The Village may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible.
- (g) Facilities shall not interfere with existing or planned street trees.
- (h) Signage shall be mounted on all new Facilities providing the Facilities Operator's name, an emergency contact phone number, an informational contact number, and all other information required by law. Unless otherwise prohibited by law, signage shall be discreet in color and shall match the Facilities and surrounding

area and font size used on the sign shall be no smaller than 9 point font and no larger than 14 point font.

- (i) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from Facilities.
- (j) Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.
- (k) The Village may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but shall not be limited to, fencing, public art, strategic placement, and placement within existing or replacement street furniture.
- (l) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.
- (m) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the Village, and the color shall match the Facilities. The Village may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the Village determines a non-matching color would better fulfil the purposes of these Design Guidelines.
- (n) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facility Operator's sole expense as soon as practicable, but no later than ten (10) days from the date the Facilities Operator receives notice of the graffiti.

1012.23 SPECIFICATIONS FOR COLLOCATION

- (a) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.
- (b) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least six (6) feet above ground level. If Small Cell Equipment is projecting toward the street then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level.

1012.24 ANTENNAS

- (a) Antennas and Accessory Equipment must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.
- (b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet.

- (c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister or other shroud. All Accessory Equipment associated with the antenna shall be concealed and shall not visibly protrude from the shroud or canister.
- (d) The width of the canister or other shroud encasing the antenna and Accessory Equipment shall not exceed the width of the narrowest portion of the Wireless Support Structure.
- (e) The enclosure or shroud shall be painted to match or compliment the Wireless Support Structure.
- (f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.
- (g) Antennas shall not impair light or views from adjacent window(s).
- (h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The Village may approve a side-mounted antenna if, in the Village's discretion, the side-mounted antenna would be more appropriate given the built environment, neighborhood character, overall site appearance or would otherwise promote the purposes in these Design Guidelines.

1012.25 WIRELESS SUPPORT STRUCTURE-MOUNTED EQUIPMENT

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

1012.26 GROUND-MOUNTED SMALL CELL EQUIPMENT

- (a) The Village shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant (1) proposes the ground-mounted equipment in connection with a Collocation, and (2) shows that the equipment cannot be feasibly placed on the Wireless Support Structure or in an underground vault.
- (b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not

technically feasible, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.

- (c) All ground-mounted Small Cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.
- (d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in any way.

1012.27 CABLES

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

1012.28 ELECTRICAL METERS

- (a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.
- (b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

1012.29 UTILITY LINES

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

1012.30 SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES

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

Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

- (b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the Village.
 - (1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the Village.
 - (2) The Village may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.
- (c) Except in the Residential Zoning Districts, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 1012.01(b)(12)(iii). The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in Residential Zoning Districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure.
- (d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the Village.
- (e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the Village.
 - (1) If partially removed, the original Wireless Support Structure foundation shall be taken back to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half ($\frac{1}{2}$) inch to three-quarter ($\frac{3}{4}$) inch compose of rock material. The remaining eight (8) shall be native soil.
 - (2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The type of backfill material and compaction required is: (a) one-half ($\frac{1}{2}$) sack slurry for the entire depth in paved areas, and (b) one-half ($\frac{1}{2}$) sack slurry for the entire depth except the top twelve (12) inches will be native soil in landscaped areas.

1012.31 SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES

- (a) New Wireless Support Structures shall be designed and constructed to accommodate at least two sets of Small Cell Equipment on the same Wireless Support Structure.
- (b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles.
- (c) In residential districts, new Wireless Support Structures shall be located at the shared property line between two residential parcels where the parcels intersect the Right-of-Way when available.
- (d) In non-residential districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines where the parcels intersect the Right-of-Way when available.
- (e) New Wireless Support Structures shall not interfere with any metered parking space.
- (f) A new Wireless Support Structure shall not be located in front of a building entrance or exit.
- (g) Except in the Residential Zoning Districts, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 1012.01(b)(12)(iii). The overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in the Residential Zoning Districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed new Wireless Support Structure.
- (h) The Village may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure.

1012.32 UNDERGROUND AREA REGULATIONS

- (a) Subject to subsection (b), a Facilities Operator shall locate its Facilities underground in an Underground Area.
- (b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an Existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.
- (c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.

- (d) An Operator may apply to the Building Inspector for a waiver of the underground placement requirement if the Operator is unable to achieve its service objective under the following circumstances:
 - (1) From a location in the public Right-of-Way where the prohibition does not apply;
 - (2) From a utility easement the service provider has the right to access; and
 - (3) From other suitable locations or structures made available by the Village at reasonable rates, fees and terms.
- (e) Submission of a waiver pursuant to subsection (d) is subject to the Facilities Operator's agreement to toll the timeframes set forth in Section 1012.08(a) of the Codified Ordinances by fourteen (14) days.

1012.99 PENALTIES; EQUITABLE REMEDIES.

- (a) Any Applicant or Operator or other person or entity acting as the agent of an Applicant or Operator who is found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day during or on which a violation occurs or continues.
- (b) Nothing in this Chapter shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this Chapter.”

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village and for the further reason that this Ordinance needs to take immediate effect to accommodate requests for Facilities' permits when the FCC's Small Cell Order that went into general effect on January 14, 2019, but permitted localities an additional 90 days or until April 14, 2019 to establish standards consistent with the FCC's Small Cell Order. Wherefore, provided it receives two-thirds (2/3) of the votes of all members elected to Council, this Ordinance shall be in full and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise it shall take effect and be in force after the earliest period allowed by law.



Mayor - President of Council

ATTEST:



Fiscal Officer

Fiscal Officer

I certify that Ordinance No. 2019 - 17 was duly enacted on the 8th day of APRIL, 2019, by the Council of the Village of South Russell, and posted in accordance with the Ordinances of the Village.



Fiscal Officer