

COMMONWEALTH OF KENTUCKY
SHELBY COUNTY FISCAL COURT
ORDINANCE NO. 05/15/01

AN ORDINANCE TO ESTABLISH THE STANDARDS FOR A MASTER AGREEMENT FOR SMALL WIRELESS FACILITIES TO BE PLACED IN COUNTY RIGHTS OF WAY IN SHELBY COUNTY; AND FOR OTHER PURPOSES.

WHEREAS, Shelby County encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while enabling Shelby County to promote management of the rights-of-way in the overall interests of the public health, safety and welfare: and,

WHEREAS, Shelby County recognizes that Small Wireless Facilities including facilities commonly referred to as small cells and distributed antenna systems are critical to delivering wireless access to advanced technology, broadband, and 911 services to residences, businesses, and schools within the County, and,

WHEREAS, Shelby County recognizes that Small Wireless Facilities are often most effectively deployed in public rights-of-way: and,

WHEREAS; Shelby County intends to fully comply with State and Federal Law to the extent it may preempt local municipal control;

**NOW, THEREFORE, BE IT ORDAINED BY SHELBY COUNTY FISCAL COURT;
AS FOLLOWS:**

Section 1. Definitions

"Antenna" means communication equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

"Applicable Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this Chapter.

"Applicant" means any person who submits an application and is a wireless provider.

"Application" means a request submitted by an applicant (i) for a Permit to collocate Small Wireless Facilities; or, (i) to approve the installation or modification of a utility pole or wireless support structure.

"County Owned Pole" means (i) a utility pole owned or operated by Shelby County in the rights-of-way, including a utility pole that provides lighting or traffic control functions, or other law enforcement functions, including but not limited to light poles, traffic signals, and structures for signage, and (i) a pole or similar structure owned or operated by Shelby County in the right-of-way that supports only wireless facilities.

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“Collocate” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. “Collocation.” has a corresponding meaning.

“Day” means calendar day unless there is a time frame for the County to respond to a request and the last day to respond ends on a weekend, holiday, or time when all but the County emergency services are closed due to weather or some unforeseen situation.

“Fee” means a one-time charge.

“Person” means and individual, corporation, limited liability company, partnership, association, trust, or other entity or organization that can sue or be sued, including the County.

“Rate” means a recurring charge.

“Rights-of-Way” or **“ROW”** means that area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, similar property, or property owned by the County, but not including a Federal Interstate Highway, in the County.

“Small Wireless Facility.” means a wireless facility that meets both of the following qualifications: (i) each Antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of not more than six (6) cubic-feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

“Utility Pole” means a pole of similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service or for lighting, traffic control signage, or a similar function regardless of ownership, including County owned poles. Such term shall not include structures supporting only Wireless Facilities.

“Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communication network, including: (i) equipment associated with wireless communications: (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and back-up power supplies, and comparable equipment, regardless of technological configuration. The terms include Small Wireless Facilities. The term does not include the structure or improvements on, under, or within the equipment is collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial of fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna,

“**Wireless Services**” means any services, whether at a fixed location or mobile, provided it is using Wireless Facilities.

“**Wireless Services Provider**” means a Person who provides Wireless Services or who builds or installs wireless support structures.

“**Wireless Support Structure**” means a freestanding structure, such as: a monopole: tower, either guyed, or self-supporting as determined by the County; billboard; or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a utility pole.

Section 2. Purpose and Scope.

(a) The purpose of this ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in rights-of-way within the jurisdiction of the Shelby County, which will provide a public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of Shelby County rights-of-way and the County as a whole.

(b) It is the intent of this Ordinance to establish uniform standards, which will be included in individual franchises and leases issued pursuant to a Master Lease for Small Wireless Facilities, to address issues presented by Small Wireless Facilities including, but not limited to:

(i) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places; and,

(ii) Prevention of the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic: and,

(iii) Prevention of interference with other facilities and operations of facilities lawfully located in County rights-of-way or public property: and,

(iv) Protection against environmental damage, including damage to trees or shrubbery including, but not limited, those items planted pursuant to County landscaping, zoning, tree preservation, or other County policies.

(v) Preservation of the character of neighborhoods in which facilities are installed: and,

(vi) Preservation of the historical character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places; and,

(vii) Facilitation of the rapid deployment of small cell facilities to provide the citizens with the benefits of advanced wireless services.

Section 3. Permitted Use: Application Process.

(a) Collocation of a Small Wireless Facility or a new or modified utility pole or wireless support structure for the collocation of a small cell facility shall be a permitted use subject to the restrictions in Section 5.

(b) No person shall place a Small Wireless Facility in the right-of-way without first fitting a Small Wireless Facility application and obtaining a permit, except as otherwise provided in this ordinance.

(c) All Small Wireless Facility applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, as required by the County. The Applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly. Materials marked in this manner shall not be maintained by the County as a public record, provided that any access as needed by the County is provided immediately upon request, not exceed forty-eight (48) hours. Proprietary or confidential information shall not include the location of Small Wireless Facilities.

(d) The Small Wireless Facility permit application shall be made by the Wireless Provider, or its duly-authorized representative as noted in a notarized statement from a Person with the Wireless Provider who represents authority to make such an authorization, and shall contain the following:

- (i) The Applicant's name, address, telephone number and e-mail address;
- (ii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
- (iii) A general description of the proposed work, and the purposes and intent of the Small Wireless Facility. The scope and detail of such description shall be appropriate to the nature character of the work to be performed, with special emphasis on those matters, including but not limited to subservice utilities, likely to be affected or impacted by the work proposed;
- (iv) Authorization for any consultant acting on behalf of the Applicant to speak with the County or a designee of the County, on the area of consultation for the Applicant even if the Applicant cannot be available;
- (v) Verification from an appropriate professional that the Small Wireless Facility shall comply with all Applicable Codes.

(e) Routine Maintenance and Replacement. An application shall not be required for:

- (i) routine maintenance; and,
- (ii) the replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight and height;
- (iii) Provided, however, on a location where the County or another provider has placed Equipment or facilities, any routine maintenance or replacement that is done shall not occur until written authorization to proceed is provided to the County, which authorization shall not be unreasonably withheld.

- (f) Information Updates: Any amendment to information contained in a permit application shall be submitted in writing to the County within thirty (30) days after the change necessitating the amendment, provided that this thirty (30) day notice period does not preempt Section 3 (E) (iii) as to notice of routine maintenance and replacement.
- (g) Interference with Public Safety Equipment; A Small Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety equipment.

Section 4. Action on Permit Application,

- (a) Review of Small Wireless Facility Applications. The County shall review the application for a Small Wireless Facility permit in light of its conformity with applicable regulations of this Ordinance, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:
- (i) Within ten (10) days of receiving an Application, the County shall determine and notify the Applicant:
- (A) Whether the Application is complete;
 - (B) If the Application is incomplete, what specific information is missing;
- (b) The County shall make its final decision to approve or deny the Application within sixty (60) days of the submission of a complete Application:
- (c) The County shall notify the Applicant in writing of its final decision, and if the Application is denied.
- (i) Specify the basis for denial; and,
 - (ii) Cite specific code provisions from Federal, State, or local codes provisions as to why the Application was denied.
- (d) Nonwithstanding the initial denial, the Applicant may cure any deficiencies identified by the County within thirty (30) days of the denial without paying an additional application fee, provided the County shall approve or deny the revised application within (30) days of receipt of the amended application which shall be limited to the deficiencies specified in the original notice of denial:
- (i) If the County fails to act upon an application within the sixty (60) day review period, the Applicant, after providing written notice to the County that the application period has lapsed, shall receive a written approval notice.
 - (ii) An applicant seeking to construct, modify or replace a network of Small Wireless Facilities May, at the Applicant's discretion, file a consolidated Application for up to twenty-five (25) Small Wireless Facilities and receive a single permit for multiple Small Wireless Facilities.
- (e) Review of Eligible Facilities Requests: Nothing in this ordinance is intended to supersede or conflict with applications for eligible facilities requests according to the procedures established under 47 CFR1.40001(c).

Section 5. Requirements for Small Wireless Facilities in the Right-of-Way.

- (a) **Maximum Size of Permitted Use.** Small Wireless Facilities and new or modified utility poles and wireless support structures for the collection of Small Wireless Facilities may be placed in the right-of-way as a permitted use subject to the following requirements.

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(i) Each new or modified utility pole or wireless support structure installed in the rights-of-way shall not exceed the greater of:

(A) Ten (10) feet above the tallest existing utility pole in the right-of-way in place as of the effective date of this ordinance located within 500 feet of the new pole:

Or

(B) Fifty (50) feet above ground-level.

(ii) New Small Wireless Facilities in the rights-of-way shall not exceed the greater of:

(A) More than ten (10) feet above an existing utility pole or wireless support structure in the rights-of-way in place as of the effective date of this ordinance; or,

(B) Above the height for a new utility pole or wireless support structure under Section 5(A)(1).

(b) **Zoning:** Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this Section shall be subject to applicable zoning requirements.

(c) **Undergrounding Provisions.** Applicant shall comply with nondiscriminatory undergrounding requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior zoning approval in areas zoned for single-family residential use, provided such requirements shall not prohibit the replacement of existing structures.

Section 6. Effect of Permit.

(a) **Authority Granted: No Property Right or Other Interest Created.** A permit from the County authorizes an Applicant to undertake only certain activities in accordance with the ordinance, and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) **Duration:** Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this ordinance shall be valid for a period longer than twelve (12) months unless both County and Applicant agree to a reasonable extension and all required fees are paid for the term regardless of construction.

Section 7. Removal, Relocation or Modification of a Small Wireless Facility in the ROW.

(a) **General Relocation Policy,** (i) In the interest of the public health, safety and welfare and consistent with the County's ordinances and master plans, Shelby County may make or cause to be made improvements, repair, or replacements of the public facilities located on public rights-of-way. Such construction activity commonly requires adjustment or relocation of installations of public utilities, and wireless service providers. The County deems the right of public utilities to use public rights-of-way to be permissive and subordinate to the reasonable exercise of the County's police power. Thus, the cost of relocating a public utility installation shall not be borne by the County.

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(ii) The policy of the County is to require a public utility or a wireless services provider to promptly adjust its facilities in, upon, under or above any right-of-way administered by the Shelby County Fiscal Court, and to accommodate construction, improvements, alterations or maintenance of public facilities when directed to do so by the Shelby County Road Department Supervisor or other Officials authorized by the County Judge Executive. Public utilities and wireless services providers shall make adjustments at their own expense, except as otherwise provided by the County, in connection with any public works projects approved and/or performed by the County regardless of the source of funds for the project.

(iii) As a matter of policy the County will seek to minimize current and future installation adjustment costs for utilities and wireless services providers by such measures as regular and systematic consultation with the Shelby County Road Department, to the extent feasible, and careful consideration of public utility and wireless services provider needs and installations in both planning and design.

(iv) The County will also reimburse a public utility or a wireless services provider for the direct costs of required adjustments when the utility or wireless services provider can demonstrate that it acquired the right-of-way or otherwise occupied it prior to the dedication of the right-of-way either to Shelby County or to any other unit of local government. Adjustment costs shall be reimbursed, when appropriate, under an agreement between the County and the utility for the particular project. Such agreement shall describe the scope of the utility's or wireless services provider's adjustment work and allocate costs. The cost allocation shall not require the County to reimburse for betterments which are only occasioned by the adjustments required.

(b) Emergency Removal or Relocation of Facilities. The County retains the right to cut or move any Small Wireless Facility located within its rights-of-way as the County, in its sole discretion, may determine to be necessary, appropriate, or, useful in response to any public health or safety emergency. If circumstances permit, the County shall allow the Wireless Provider and Wireless Infrastructure Provider an opportunity to move its own facilities prior to the County cutting or removing a facility and the County shall notify the Wireless Provider after cutting or removing a Small Wireless Facility.

(c) Abandonment of Facilities, Upon abandonment of a Small Wireless Facility within the County rights-of-way, the Wireless Provider shall notify the County within ninety (90) days of such abandonment. Following receipt of such notice the County may direct the Wireless Provider to remove all or any portion of the Small Wireless Facility if the County, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.

(d) Abandonment by Inaction: At any point where a Wireless Provider fails to pay any necessary fee, or annual payment to the County, and fails to respond within sixty (60) days to a written inquiry from the County as to whether the Wireless Provider intends to continue to

operate pursuant to the County's Master Lease for Small Wireless Facilities for whatever reason, the Small Wireless Facility shall be deemed abandoned and the County may, at its sole option, remove all or any portion of the Small Wireless Facility, or take other action as authorized by law.

Section 8. Attachment to County-Owned Utility Poles in the ROW

(a) **Cease Payment.** A wireless provider is authorized to remove its facilities at any time from a County-owned pole in the rights-of-way and cease paying the annual rate to the County.

(b) **Make-Ready.** For County-owned utility poles in the rights-of-way, the County shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the wireless provider.

Section 9. Change of Law. A permit for the placement of facilities within the County's right-of-way may include a provision on the obligations of the parties if there is a change of law at the Federal, State, or local level.

Section 10. Biannual Review. The County may, in its sole discretion, require the Applicant to review the terms and conditions of any lease or permit issued pursuant to this ordinance on a biannual basis to determine if the terms and conditions for the use of County rights-of-way are still in the best interests of the County pursuant to the law and regulations in effect at the time.

Section 11. Fees and Rentals. The following fee schedule establishes the fees and an annual payment or lease of County rights-of-way for Small Wireless Facilities as follows:

(a) **Application Fees.** Unless otherwise provided by law, all applications for permits pursuant to this Chapter shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the County related to processing the application, but shall not exceed One Hundred Dollars (100.00).

(b) **Annual Rate.** The rate to place a Small Wireless Facility on a County-owned pole in the right-of-way shall be Twenty Dollars (\$20.00) per wooden pole or Two Hundred Dollars (\$200.00) per year for all other County-owned poles. Such compensation together with the application fee and the rights-of-way fee specified in this ordinance shall be the sole compensation that the Wireless Provider shall be required to pay the County.

(c) **Use of Right-of-Way County Property Rental Rates.** A wireless provider authorized to place Small Wireless Facilities in the rights-of-ways shall pay to the County compensation for use of the rights-of-way in the amount of Twenty Dollars (\$20.00) annually per Small Wireless Facility.

(d) **Right of Wireless Provider to Cease Payment.** A wireless provider is authorized to remove its facilities at any time from the rights-of-way and cease paying the County compensation for use of the rights-of-way as of the next due date for payment following the removal.

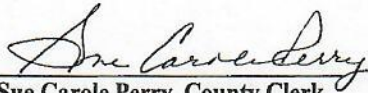
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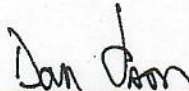
Section 12. Severability. In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or work of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

Section 13. Repealer. All ordinances, resolutions, or parts of the same that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

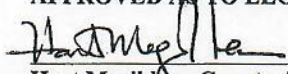
PASSED: ATTEST:

APPROVED:


Sue Carole Perry, County Clerk


Dan Ison, County Judge Executive

APPROVED AS TO LEGAL FORM:


Hart Megibben, County Attorney

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