# Canal Winchester

*Town Hall*
*10 North High Street*
*Canal Winchester, OH 43110*

# Meeting Agenda

**September 17, 2018**

**6:00 PM**

## Council Work Session

***Mike Walker – Chair***
***Jill Amos***
***Will Bennett***
***Bob Clark***
***Mike Coolman***
***Bruce Jarvis***
***Patrick Lynch***

**A. Call To Order**

**B. Roll Call**

**C. Also In Attendence**

*Mayor Ebert, Matt Peoples, Amanda Jackson, Bill Sims, Dick Miller, Steve Smith, Shawn Starcher, Rick Brown, Sargent Cassel, Shane Spencer*

**D. Reports**

*Bill Sims -*

*Dick Miller -*

*Steve Smith -*

*Shawn Starcher -*

*Rick Brown -*

*Sargent Cassel -*

*Shane Spencer -*

**E. Request for Council Action**

| | |
|---|---|
| **ORD-18-033**<br>*Construction Services* | An Ordinance Amending Section 1193 Of The Codified Ordinances Regarding Wireless Communication Facilities (**Ordinance, P&Z Recommendation**)<br>*- Request to move to full Council* |

**F. Items for Discussion**

**G. Old/New Business**

**H. Adjournment**

**ORDINANCE NO. 18-033**

**AN ORDINANCE AMENDING SECTION 1193 OF THE CODIFIED ORDINANCES REGARDING WIRELESS COMMUNICATION FACILITIES**

WHEREAS, in order to provide regulations for the construction and use of wireless communication facilities within the City of Canal Winchester to ensure that such devices are in good operation, have minimal impact on other properties and do not create a public nuisance;

WHEREAS, the Planning and Zoning Commission initiated Application #ZA-18-004 and following a public hearing held on Sept 10, 2018 has recommended approval of this ordinance; and

WHEREAS, notice of a public hearing has been duly advertised and the public hearing has been held before the Council of the City of Canal Winchester.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1. That Section 1193 of the Codified Ordinances of the City of Canal Winchester, shall hereby be amended to read as follows:

**CHAPTER 1193**
**Wireless Communication Facilities**


1193.01 Intent and Purpose
**1193.02. Definitions**
1193.03 Private Non-Commercial Antennas, Satellite Dish Antennas, and Antenna Support Structures
1193.04 Amateur Radio Antennas and Antenna Support Structures
1193.05 Commercial, Public, and Semi-public Antennas, Support and Equipment Structures
**1193.06 Small-Cell Facilities in Municipal Rights-of-Way**


CROSS REFERENCES
Definitions - see P. & Z. Chapter 1133
Accessory Uses and Structures – see P. & Z. Chapter 1195

---

**1193.01 INTENT AND PURPOSE.**

The intent of this Chapter is to balance the diverse interests in wireless communication; to improve citizen access and use of new and existing technologies; to assure the right of business the exercise of free trade; and to protect the community from uncontrolled proliferation of antennas and antenna support structures. More specifically, the purpose is to provide for the proper location of private as well as public and commercial wireless facilities, including antennas, dish antennas, antenna support structures, and accessory equipment structures; to encourage multiple use of antenna support structures **(i.e., building and structures other than towers) and existing towers, rather than construction of new towers;** to ensure compatibility with nearby uses; in particular to minimize negative impacts on residential areas; and otherwise to assure the public health, safety and general welfare of the community. It is also the purpose of this Chapter to conform with the federal preemption pertaining to amateur radio operations per 101 FCC 2d 952 (1985) and with exemptions for antennas utilized by amateur radio operators who are duly licensed by the FCC under Part 97 Rules Section 153(q) of Title 47 USC, **and to comply with the Federal Telecommunications Act of 1996, the 2012 Public Safety and Spectrum**

**Act, and other federal or state laws governing requests for installation, collocation, or expansion of wireless telecommunications facilities and support structures.**

**1193.02 DEFINITIONS**

**(a) *General use of terms.***

**(1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.**

**(2) When consistent with the context, words used in the present tense also include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number.**

**(3) All terms used in the definition of any other term shall have their meaning as otherwise defined in this section.**

**(4) The words "shall" and "will" are mandatory and "may" is permissive.**

**(5) Words not defined shall be given their common and ordinary meaning.**

**(b) Defined terms.**

**(1) *"Abandoned"* Any small cell facilities or wireless support structures that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the city and receiving the city's approval.**

**(2) *"Alternative Tower Structure"* Includes, but is not limited to man-made trees, clock towers, bell steeples, light poles, power poles, and similar alternative-design mounting structures or other buildings or structures that are intended to camouflage or conceal the presence of antennas, towers, and other wireless communications facilities.**

**(3) *"Antenna"* Any transmitting or receiving device used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals, or other communication signals.**

**(4) *"Antenna Support Structure"* Any building or structure other than a tower which can be used for the location of wireless communications facilities.**

**(5) *"Applicant"* Any person that applies for administrative review, conditional use review, certificate of zoning plan approval, or other permit or approval according to the requirements of this chapter.**

**(6) *"Application"* The materials and process by which an applicant submits a request as authorized by the property owner and indicates a desire to be granted approval of an antenna, tower, antenna support structure, or any other wireless communications facility under the provisions of this chapter. An application includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the city concerning the request, but shall not include materials submitted as part of a request for non-binding pre-application review.**

**(7) *"Backhaul Network"* The infrastructure that connects a provider's wireless communications facility sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.**

**(8)** ***"Cable Franchise"*** **An initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. 522 Section 546), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.**

**(9)** ***"Cable Microcell Network or CMN"*** **A wireless telecommunications facility characterized by small antennas and equipment cabinets, and typically located on a small diameter monopole; on an existing or replacement street light, power pole, sign, or other suitable structure; or on an existing building.**

**(10)** ***"Cable Operator"*** **Any person or group of persons:**

A. **Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or**

B. **Who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;**

***(11)*** ***"Cable Service"***

**A. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and**

**B. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.**

**(12)** ***"CFR"*** **Committee of the Federal Register, established under section 1506 of title 44, United States Code.**

**(13)** ***"Clear Zone"*** **The unobstructed, traversable area provided beyond the edge of the through traveled way for the recovery of errant vehicles. The clear zone includes shoulders, bike lanes, and auxiliary lanes, except those auxiliary lanes that function like through lanes. As defined in the ODOT Location and Design Manual, Volume 1, Section 600—Roadside Design.**

**(14)** ***"Cellular-On-Wheels or COW"*** **A temporary mobile wireless communications facility that consists of a wireless antenna tower and associated equipment on a truck, trailer, or other mobile structure designed to be part of a wireless network.**

**(15)** ***"Chief Building Official"*** **The Chief Building Official of the city.**

**(16)** ***"City"*** **The City of Canal Winchester, Ohio.**

**(17)** ***"Code"*** **The Codified Ordinances of the City.**

**(18)** ***"Collocation"*** **The use of, or ability to use, a wireless communications facility or support structure by more than one wireless communications provider or more than one wireless antenna array.**

**(19)** ***"Conditional Use"*** **A use allowed in a zoning district after approval of the Planning and Zoning Commission according to the provisions of Chapter 1145 of the Codified Ordinances.**

**(20)** ***"Decorative Pole"*** **A pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:**

A. **Electric lighting;**

B. **Specially designed informational or directional signage;**

C. **Temporary holiday or special event attachments.**

**(21)** ***"Design Guidelines"*** **Means those detailed design guidelines, specifications and examples promulgated by the City for the design and installation of small cell facilities and wireless support structures, which are effective insofar as they do not conflict with federal and state law, rule and regulations, or with the provisions of the Codified Ordinances.**

**(22)** ***"District or Zoning District or Zone District"*** **A portion of the city within which certain uses of land and/or buildings are permitted and under the regulations and requirements of Part Eleven of the Codified Ordinances.**

**(23)** ***"Eligible Facilities Request"*** **Means the same as defined by the FCC in 47 U.S.C. 1455 (a)(2), as may be amended.**

**(24)** ***"Emergency"*** **A reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action, mitigation, or abatement.**

**(25)** ***"Engineer"*** **Any engineer currently licensed by the State of Ohio.**

**(26)** ***"Equipment Shelter, Equipment Structure, or Equipment Cabinet"*** **The structure in which the electronic receiving and relay equipment or other necessary equipment for a wireless communications facility is located.**

**(27)** ***"FAA"*** **The U.S. Federal Aviation Administration, and any legally appointed, designated, or elected agent or successor.**

**(28)** ***"FCC"*** **The U.S. Federal Communications Commission and any legally appointed, designated, or elected agent or successor.**

**(29)** ***"Height or Above Ground Level or AGL"*** **When referring to a tower or other structure, the distance measured from the finished grade at the base of the tower or structure to the highest point on the tower or structure, including the base pad and any antenna, but not including lightning arrest devices.**

**(30)** ***"Historic District"*** **A building, property, or site, or group of buildings, properties, or sites that are either of the following:**

A. **Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;**

B. **A registered historic district as defined in section 149.311 of the Revised Code.**

**(31)** ***"Landmarks Commission"*** **The Landmarks Commission created by Section 1139.02 of the Codified Ordinances.**

**(32)** ***"Monopole"*** **A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.**

**(33)** ***"Nonconforming Tower"*** **Any tower or antenna lawfully existing at the effective date of or amendment to this chapter which does not currently conform to the requirements of this chapter.**

**(34)** ***"Occupy or Use"*** **With respect to the right-of-way, to place a tangible thing in the right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.**

**(35)** ***"Ohio Manual of Uniform Traffic Control Devices or OMUTCD"*** **The uniform system of traffic control devices promulgated by the Ohio Department of Transportation.**

**(36)** ***"Old Town Overlay District"*** **The Old Town Overlay District established by Section 1175.01 of the Codified Ordinances.**

**(37)** ***"Operator"*** **A wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service. For the purpose of §§1193.06 through 1193.065, "operator" includes 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.**

**(38)** ***"Person"*** **Any individual, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not-for-profit. (definition given in 1133 definitions)**

**(39)** ***"Planning And Zoning Commission"*** **The Planning and Zoning Commission for the city, as created by Section 7.01 of the City Charter.**

**(40)** ***"Public Utility or Utility"*** **A facilities-based provider of wireless service to one or more end users in this state, or any company described in section 4905.03 of the Ohio Revised Code and as further defined in section 4905.02 of the Ohio Revised Code, including but not limited to the following types of companies: telephone, electric light, gas, natural gas, pipe-lines, water-works, and sewage disposal systems**

**(41)** ***"Right-of-Way"*** **The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bike path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the city. "Right-of-way" shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation. (definition given in 1133 definitions)**

**(42)** ***"Small Cell Facility"*** **A wireless facility that meets both of the following requirements:**

A. **Each antenna is located inside an enclosure of not more than six (6) 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 enclosure of not more than six cubic feet in volume.**

B. **All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) 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.**

**(43)** ***"Stealth"*** **A wireless communications facility designed to appear as another natural or artificial object that exists in the surrounding environment or which is architecturally integrated into a building or other structure, and designed to be minimally obtrusive and to camouflage or conceal the presence of antennas or towers, at the determination of the required reviewing body.**

**(44)** ***"Substantial Change"*** **Has the same meaning as described in 47 C.F.R. 1.40001(b)(7).**

**(45)** ***"Temporary Wireless Communications Facilities"*** **A cellular-on-wheels unit; an antenna on a bucket truck, crane, crank-up tower, tower; or another wireless communications facility required to evaluate a site for a temporary placement of a wireless communications facility as permitted by this chapter or for providing communications during an emergency, special event, conference, or other situations for limited periods while the use of a permanent wireless communication facility is temporarily interrupted.**

**(46)** ***"Tolling or Toll Period"*** **The pausing or delaying of the running of a required time period.**

**(47)** ***"Tower"*** **Any structure designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio, and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, wireless communications towers, alternative tower structures, and the like. The term includes the structure and any necessary supports.**

**(48)** ***"Utility Pole"*** **A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and decorative poles.**

**(49)** ***"Video Service Provider"*** **A person granted a video service authorization under sections 1332.21 to 1332.34 of the Ohio Revised Code.**

**(50)** ***"Wireline Backhaul Facility"*** **A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.**

**(51)** ***"Wireless Communications Facilities or WCF"*** **Includes, but shall not be limited to, towers, poles, cables, wires, lines, wave guides, antennas, microwave dishes, small cell facilities and wireless support structures, and/or any other equipment or facilities associated with the transmission or reception of communications as regulated by the FCC (or other unregulated wireless communication facility). The term shall not include:**

A. **Any satellite earth station antenna 6.6 feet or less in diameter or diagonal measurement located in a non-residential district.**

B. **Any satellite earth station antenna one meter or less in diameter or diagonal measurement that is designed to receive direct broadband satellite service, including direct-to-home satellite services, or to receive or transmit fixed wireless signals via satellite regardless of zoning**

**category.**

C. **Any antenna that is 3.3 feet or less in diameter or diagonal measurement and is designed to receive video programming service via broadband video services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.**

D. **Any antenna that is designed to receive local television broadcast signals and does not use a mast higher than 15 feet above the tallest point of the roof of the tallest principal or accessory structure, excluding chimneys, cupolas, or other architectural elements.**

E. **Antennas used by amateur radio operators.**

F. **Towers, structures, antennas, or other equipment used for the purposes of operating a public safety voice or data radio network or an outdoor early warning system within the city limits. This includes directional and omnidirectional antenna equipment, as well as microwave and point-to-point equipment.**

**(52)** ***"Wireless Service"*** **Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.**

**(53)** ***"Wireless Service Provider"*** **A person who provides wireless service as defined herein.**

**(54)** ***"Wireless Support Structure"*** **A pole, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small cell facilities, excluding utility poles or other facilities used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.**

**~~1193.02~~ 1193.03 PRIVATE NON-COMMERCIAL ANTENNAS, SATELLITE DISH ANTENNAS, AND ANTENNA SUPPORT STRUCTURES.**

Private non-commercial antennas, satellite dish antennas, and antenna support structures are permitted accessory uses in any zone district under the following conditions:

(a) Exclusion: This section does not apply to satellite dish antennas 3.3 feet or less in diameter in residence zones or 6.6 feet or less in commercial and industrial zones.

(b) Dish antennas greater than five (5) feet in diameter may not be placed on the roof of a principal or accessory building in any residential zone because of objectionable aesthetic impact on surrounding dwellings and views therefrom.

(c) Structures controlled under provisions of this Section, including guys, are prohibited in any front or side yard of a lot or parcel in any residential or commercial zone and shall not encroach upon any side yard setback line, nor be placed within ten (10) feet of the rear property line~~, provided that guy wire anchors may be located within one (1) foot of property lines that define the rear yard~~. In addition, an antenna support structure in residential and commercial zones shall be set back from the nearest property line a distance equal to structural height.

(d) Height of any antenna support structure covered under this Section shall be controlled by the height regulation of the zone in which it is located, provided that an antenna on such support structure shall be permitted up to twenty-five (25) feet of additional height in excess of the zone limit.

(e) Structures covered under this Section, for which an in-ground foundation or substructure must be constructed or which are roof mounted and extend more than fifteen (15) feet above the ridge line of the roof, shall require a building permit prior to erection, enlargement, increase in height or relocation. The application for a

permit shall include address of lot or parcel, type of structure and height, and placement on lot or parcel shown on an illustration drawn to scale. Also required is information on method of installation including, as appropriate, details on structural support, footings, foundations, guys, braces, anchors, and grounding. As part of the permitting process the applicant will affirm receipt of a Safety Advisory Bulletin concerning safety issues, grounding, anti-climb devices, guying and wire sizes, and maintenance and inspections.

(f) Climbable antenna support structures shall be completely enclosed by a fence six (6) feet in height or shall have an effective anti-climb device attached as described in the Safety Advisory Bulletin. If fenced, the fence shall restrict the passage of a two (2) inch diameter sphere.

(g) Lots or parcels in residential zones shall be limited to not more than one (1) antenna support structure per building containing one (1) or more dwelling units.

(h) An antenna support structure shall be inspected annually and maintained in a safe condition by the owner or operator. Such owner or operator shall notify the Planning and Zoning Administrator if requisite safety standards are no longer being met and what steps are being taken to remedy the situation. The owner or operator of such structure shall maintain a record of inspections on file and a log of routine maintenance as well as work undertaken in response to inspections.

(i) Upon cessation of ownership or leasehold rights in an antenna support structure, the operator or property owner shall remove such structure within ninety (90) days, or within thirty (30) days of receipt of final written notice from the Municipality to do so, provided that the new owner or leaseholder may retain said structure, after its inspection and written notice to the Planning and Zoning Administrator of the intention to retain such structure and to assume responsibility for same under this section.

**~~1193.03~~ 1193.04 AMATEUR RADIO ANTENNAS AND ANTENNA SUPPORT STRUCTURES.**

Amateur radio antennas and antenna support structures are permitted accessory uses in any zone district under the following conditions:

(a) Exclusion: This section does not apply to satellite dish antennas 3.3 feet or less in diameter in residence zones or 6.6 feet or less in commercial and industrial zones, and wire antennas erected unobtrusively for the purpose of amateur radio communications.

(b) Dish antennas greater than five (5) feet in diameter may not be placed on the roof of a principal or accessory building in any residential zone because of objectionable aesthetic impact on surrounding dwellings and views therefrom.

(c) Structures controlled under provisions of this Section are prohibited in any front or side yard of a lot or parcel in any residential or commercial zone, provided that guy wire anchors may encroach into the side yard. Guy wire anchors and structural foundations may be located not closer than ~~one (1) foot~~ **five (5) feet** to property lines that define the rear **or side** yard~~, and in the case of guy wire anchors, in the side yard, provided that antennas may encroach within the one (1) foot setback, and may even protrude over the lot line, where written permission to do so is provided by the current affected property owner and is on file with the Planning and Zoning Administrator~~.

(d) The overall antenna height shall be limited to one ~~hundred (100)~~ **fifty (50)** feet above grade whether freestanding or mounted on a structure. **In addition, an antenna support structure, plus the antenna(s) shall be set back from the nearest property line a distance equal to structural height.** If the Planning Commission determines it necessary to consult with an expert in considering an increase in overall antenna height, all reasonable costs and expenses associated with such consultation shall be borne by the person seeking to exceed such height limit.

(e) Structures covered under this Section, for which an in-ground foundation or substructure must be constructed, and/or which exceed thirty-five (35) feet in height above grade, or which are roof-mounted ~~and extend more than fifteen (15) feet above the ridge line of the roof~~, shall require a building permit prior to erection, enlargement, increase in height or relocation. The application for a permit shall include address of lot or parcel,

type of structure and height, and placement on lot or parcel shown on an illustration drawn to scale. Also required is information on method of installation including, as appropriate, details on structural support, footings, foundations, guys, braces, anchors, and grounding. As part of the permitting process the applicant will affirm receipt of a Safety Advisory Bulletin concerning safety issues, grounding, anti-climb devices, guying and wire sizes, and maintenance and inspections.

(f) Climbable antenna support structures shall be completely enclosed by a fence six (6) feet in height or shall have an effective anti-climb device attached as described in the Safety Advisory Bulletin. If fenced, the fence shall restrict the passage of a two (2) inch diameter sphere. **Climbable antenna support structures shall only be permitted in non-residential zoning districts.**

(g) **Lots or parcels over one (1) acre**. Lots or parcels in residential ~~zones~~ **zoning districts over one (1) acre** shall be limited to not more than one antenna support structure in excess of thirty-five (35) feet in height above grade per building containing one or more dwelling units. ~~A second support structure, which is thirty-five (35) feet or less in height, shall be permitted, and may be accompanied by antenna(s) of up to twenty-five (25) feet of additional height.~~ **The maximum height of the antenna support structure, plus the antenna(s) shall not exceed fifty (50) feet in height above grade. In addition, an antenna support structure, plus the antenna(s) shall be set back from the nearest property line a distance equal to structural height.**

(h) **Lots or parcels under one (1) acre. Lots or parcels in residential zoning districts under one (1) acre may be granted a Conditional Use Permit as described in Section 1145, which would be limited to not more than one (1) antenna support structure in excess of thirty-five (35) feet in height above grade per building containing one or more dwelling unit. The maximum height of the antenna support structure, plus the antenna(s) shall not exceed fifty (50) feet in height above grade. In addition, an antenna support structure, plus the antenna(s) shall be set back from the nearest property line a distance equal to structural height.**

(i) An antenna support structure shall be inspected annually and maintained in a safe condition by the owner or operator. Such owner or operator shall notify the Planning and Zoning Administrator if requisite safety standards are no longer being met and what steps are being taken to remedy the situation. The owner or operator of such structure shall maintain a record of inspections on file and a log of routine maintenance as well as work undertaken in response to inspections.

(i) Upon cessation of ownership or leasehold rights in an antenna support structure, the operator or property owner shall remove such structure within ninety (90) days, or within thirty (30) days of receipt of final written notice from the Municipality to do so. Where the new owner or leaseholder is a licensed amateur radio operator, such person may retain said structure after its inspection and written notice to the Planning and Zoning Administrator of intention to do so and to assume responsibility for same under this section.

**~~1193.04~~ 1193.05 COMMERCIAL, PUBLIC, AND SEMI-PUBLIC ANTENNAS, SUPPORT AND EQUIPMENT STRUCTURES.**

Commercial, public, and semi-public antennas, radio and television antennas, microwave and other wireless ~~communication antennas~~ **communications facilities**, dish antennas, antenna-support structures, towers, and equipment structures, are permitted as primary or accessory uses, subject to Site Plan Review of Chapter **1141** under the ~~following conditions~~ **terms and conditions set forth in this Section. Installation of small cell facilities in public rights-of-way shall be governed by §§1193.06 through 1193.065.**

(a) Antenna support structures with antenna, **and towers,** may be located as follows:

(1) On property or existing buildings in any commercial or industrial zone where located not closer than five hundred (500) feet from any residential unit in any residential zone, subject to review by the Planning and Zoning Commission. ~~Support structures. **Towers** shall be excluded from Municipality park, cemetery, and museum property, provided that public communication structures qualifying as essential services as defined in this chapter shall not be so excluded.~~

(2) On property or existing buildings in any residential zone where located not less than five hundred (500) feet from any residential unit in any residential zone, subject to review by the Planning and Zoning Commission. ~~Support structures. **Towers** shall be excluded from Municipality park, cemetery, and museum property, provided that public communication structures qualifying as essential services as defined in this chapter shall not be so excluded.~~

(3) **All towers placed or constructed within the City shall be designed to have a stealth appearance, including by use of alternative tower structures, to be aesthetically and architecturally compatible with the surrounding built or natural environment. All wireless communications facilities collocated on antenna support structures shall be designed to have a stealth appearance, which may include concealment in RF-transparent material, color, or other techniques to make the facility aesthetically and architecturally compatible with the surrounding built or natural environment.**

(b) Antennas and antenna arrays, independent of antenna support structures normally accompanying their use, may be located as follows **An antenna support structure may consist of the following:**

(1) ~~On e~~ **E**xisting buildings or structures in commercial and industrial zones.

(2) ~~In any zone on e~~ **E**xisting tall structures, excluding those provided for in Section ~~1193.02~~ **1193.03** and ~~1193.03~~ **1193.04**, such as ~~communication towers~~ power transmission towers and poles, stadium and athletic field lighting standards, water storage tanks, ~~street light standards along expressways and major and regional streets as defined by the Municipality's thoroughfare plan~~, and ~~on or within other~~ similar tall structures as determined by the Planning and Zoning Administrator.

(c) Structures for housing of equipment required to operate an antenna, not higher than twelve (12) feet above grade nor greater than three hundred (300) square feet in area, may be constructed in proximity to ~~an antenna support structure or existing tall **structure**~~ **wireless communications facility** as accessory to each antenna array or user of ~~an antenna support structure~~ **wireless communications facility**. A single, larger structure may be built for multiple users, provided that total floor area does not exceed six hundred (600) square feet. An equipment structure may also be treated as a mechanical appurtenance or penthouse on the roof of an existing building on which the antenna, antenna array, or antenna support structure is erected. Where the equipment structure is erected at grade, color and character of the exterior surface shall be aesthetically and architecturally compatible with buildings in the surrounding area.

(d) Except in LM and PID Zones, ~~antenna support structures~~ **towers** shall maintain a setback from the nearest property line a distance at least equal to the height of the structure ~~provided that a structure mounted on the roof of a building shall not be so restricted~~ **Antennas mounted on the roof of an antenna support structure shall not, in combination with the structure, exceed the maximum height permitted in the zoning district.**

(e) Overall ~~antenna~~ **tower** height covered under this Section shall be limited to not more than one hundred fifty (150) feet above grade.

(f) Required submittals accompanying applications:

**(1) Completed application form and application fee;**

**(2) A scaled and dimensioned site plan (not less than 1" = 50') clearly indicating the following:**

**(A) Location, type and height of the proposed wireless communications facility (height includes height of antenna and antenna support structure if the facility is being located on an existing antenna support structure; height includes total height from grade for a tower);**

**(B) The existing or proposed lease area and parcel boundaries for the site;**

**(C) On-site land uses and zoning, and adjacent land uses and zoning (including adjacent land outside municipal boundaries, if applicable);**

**(D) Adjacent roadways and rights-of-way;**

**(E) Any buildings within 100 feet of the property boundary;**

**(F) Proposed means of pedestrian and/or vehicular access as applicable to the type of facility;**

**(G) The setback distance between the proposed wireless communications facility, equipment structures or cabinets, and the nearest property lines;**

**(H) Elevation drawings of the proposed wireless communications facilities, including material specifications for all associated site improvements; and**

**(I) Any other proposed improvements, including but not limited to structures, grading, tree removals and replacement, topography, parking, and other information necessary to determine compliance with the provisions of this Section.**

**(3) Legal description and/or property survey of the parent tract and leased parcel (if applicable);**

**(4) For all new towers, the separation distance from other existing and planned wireless communications facilities shall be shown on a map, and shall include latitudinal and longitudinal location coordinates of such existing and planned facilities. The applicant shall also identify the type of construction of the existing wireless communications facilities and the owner/operators of the existing facilities, if known;**

**(5) For all new towers, a landscape and screening plan showing proposed landscape materials, quantities, installation sizes, and/or fencing materials, to screen the base of the tower and any accessory equipment structure, compliant with Chapter 1191 of the Codified Ordinances;**

**(6) A written statement that the applicant complies with applicable requirements of this Section and all applicable federal, state, or local laws, including those of the FCC and FAA;**

**(7) For all new towers, a structural analysis sealed by an engineer affirming that the proposed tower will accommodate collocation of additional antennas as required by division (i) of this Section;**

~~(1) Applicant must provide a written statement that the proposed antenna and antenna support wireless communications facility is compliant with: antenna and antenna support structure site federal registration; federal law and regulations concerning maximum exposure to non-ionizing radiation and ionizing radiation standards, singly or as co-located, recertified biannually.;~~

~~(2) Applicant must provide an analysis of the visual impact of the antenna support structure on the surrounding area. Such analysis shall include points-of-view renderings of the structure to scale in its proposed setting, with special attention to adjoining residential areas, including proposed landscaping to screen the structure base and any accessory building.~~

(g) No placement of new ~~antenna support structures~~ **towers** shall be permitted unless the Planning and Zoning Commission finds credible evidence establishing to a reasonable certainty one or more of the following:

(1) No existing antenna support structure~~, tall structure or building~~ **or tower** is located in the area in which the applicant's equipment must be located, or

(2) No existing antenna support structure or ~~tall structure or building~~ **tower** in the area is of sufficient height to meet the applicant's requirements and the deficiency cannot be remedied at reasonable cost, or

(3) No existing antenna support structure or ~~, tall structure or building~~ **tower** within the area has sufficient structural strength to support the applicant's equipment and the deficiency cannot be remedied at reasonable cost, or

(4) Electromagnetic interference would occur between the applicant's and existing equipment and such interference cannot be eliminated at reasonable cost, or

(5) The fees, costs or contractual provisions required by the owner to co-locate on existing antenna support structure ~~tall structure or building~~ **or tower** are unreasonable relative to industry norms, or

(6) The applicant demonstrates that there are other factors that render existing antenna support structures**,** ~~tall structures or buildings~~ **or towers** unsuitable or unavailable for co-location. The cost of eliminating impediments to ~~co- location~~ **collocation** shall be deemed reasonable if it does not exceed ~~by twenty-five (25) percent~~ **one hundred twenty-five percent (125%)** of the cost of constructing a new ~~antenna support structure~~ **tower** on which to mount the applicant's equipment.

(j) If the Planning and Zoning Commission determines it necessary to consult with an expert in considering the factors listed in subsection (g) above, all reasonable costs and expenses associated with such consultation shall be borne by the applicant. Failure to pay such costs and expenses or provide information requested by the Planning & Zoning Commission shall be grounds for denial or the withholding of the issuance of a building permit until such costs have been paid.

(k) Unless shown to be unreasonable, a condition of approval shall be to construct ~~an antenna support~~ **the tower** so as to accommodate the ~~co-location~~ **collocation** of at least three additional antenna arrays similar in size and function to that placed by the applicant. The additional ~~co-location-~~ **collocation** sites shall be made available at prevailing rates in the industry and under standard contractual provisions. Failure to do so shall be considered grounds for denying approval or voiding of approvals given.

(l) Any modification which significantly alters the appearance, height, or structural integrity of ~~an antenna support structure~~ **a tower** or which involves the installation of antenna equipment differing in size or function from that previously installed shall require the approval of the Planning and Zoning Commission.

(m) Additional approval by the Planning and Zoning Commission shall not be required for ~~co-location~~ **collocation** on an existing antenna support structure **or tower**, provided the ~~co-located~~ **collocated** antenna array and equipment is similar in size and function to that installed by the applicant of the approved **tower or** antenna support structure. Such ~~co-location~~ **collocation** shall be subject to review and approval of the Planning and Zoning Administrator. **All applications for location of a wireless communications facility in the Old Town Overlay District, Historic District, and Preservation Districts, or on a designated Landmark as defined in §1139.02 of the Codified Ordinances, shall be subject to review for a certificate of appropriateness from the Landmarks Commission pursuant to §1175.01 of the Codified Ordinances.**

(n) No advertising or business signs shall be allowed on ~~structures covered under this section~~ **wireless communications facilities**.

**(o)** No signals, lights or illumination not required by the FCC, FAA, or Municipality may be placed on ~~structures covered by this Section~~ **wireless communications facilities**. Any such required signal or light shall be shielded to prevent downward transmission of light **unless such shielding is contrary to an express requirement of the FCC, FAA, or other regulating authority having jurisdiction over the facility.**

(p) ~~Antenna support structures~~ **All wireless communications facilities and accessory equipment structures** shall have an exterior finish that preserves their structural integrity and visual appearance.

(q) Structures covered under this Section shall require a building permit prior to erection, enlargement, and increase in height or relocation. The application for a permit shall include construction drawings showing the proposed method of installation, including details of structural support, footing, foundation, guys, braces, anchors, and such other information as required by the Planning and Zoning Administrator to assure proper engineering practice. A site plan and other illustration drawn to scale shall be provided showing the lot or parcel on which the structure is to be erected, all structures on site, all structures within two hundred (200) feet of the site, all structural elements, and all other relevant information.

(r) ~~Antenna support structures~~ **Towers** shall be inspected annually and maintained in a safe condition by the owner or operator. Such owner or operator shall notify the Planning and Zoning Administrator if requisite safety requirements are no longer being met and the steps being taken to remedy the situation. The owner or operator shall maintain inspection reports on file and a log of routine maintenance as well as work undertaken in response to inspection reports.

(s) The owner or operator of ~~an antenna or antenna support structure~~ **a wireless communications facility** shall give notice to the Planning and Zoning Administrator when such equipment is no longer in use. Any such equipment no longer used for a continuous period of six (6) months or which no longer meets safety standards in the view of the Planning and Zoning Administrator shall be removed ~~it shall be removed~~ within sixty (60) days of written notice by the Municipality to do so. If not removed within such sixty (60) day period, the Municipality may remove it at the owner's expense.

**(t) The following provisions shall apply to administrative review of applications to place, construct, or modify wireless communications facilities under this Section:**

**(1) Applications to place, construct, or modify wireless communications facilities will receive a decision within a reasonable period of time after the application is filed; one hundred fifty days for applications to install a new tower, and ninety days for collocation on an existing tower or antenna support structure, are presumed to be reasonable.**

**(2) The presumptive reasonable time for decision on an application as provided in 1193.05(r)(1) may be waived, tolled, or extended for a definite period of time by mutual agreement of authorized agents of the City and the applicant.**

**(3) The Planning and Zoning Commission, Landmarks Commission, Planning and Zoning Administrator, or other reviewing official, if denying an application to place, construct, or modify a wireless communications facility, will provide such decision to the applicant in writing. The decision shall be supported by substantial evidence contained in a written record, which shall be provided either in the same writing as the decision or essentially contemporaneously with the decision.**

**(u) Temporary wireless communications facilities may be approved by the Planning and Zoning Administrator for a period not to exceed thirty days. The Planning and Zoning Administrator may permit one thirty-day extension of the approval for a temporary facility. All temporary wireless communications facilities shall be subject to height and setback requirements of this Section; be accompanied by temporary screening to minimize visual impact on its surroundings; not emit noise audible from a distance of fifty feet or more from the property line or cause inconvenience or annoyance to persons of ordinary sensibilities; and comply with all federal, state, and local laws, rules, and regulations concerning operation of temporary wireless communications facilities.**

**(v) Nonconforming towers shall be permitted to continue their use as they exist as of the date of adoption or amendment of this Section. Routine maintenance of nonconforming towers is permitted. If the nonconforming tower is damaged or destroyed by forces outside the owner's control (force majeure), it may be replaced by a tower of like construction and height serving the same purpose without having to obtain zoning approval; it shall still be subject to all building, electrical, and similar permit requirements.**

**Such re-construction must be completed within one year of the nonconforming tower's damage or destruction.**

**1193.06 SMALL-CELL FACILITIES IN MUNICIPAL RIGHTS-OF-WAY**

**(a) *General Requirements.* The following requirements shall apply to all small cell facilities and wireless support structures proposed within the right-of-way.**

**(1) No person shall occupy or use the right-of-way except in accordance with law.**

**(2) In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare.**

**(3) No person shall occupy or use the right-of-way without first obtaining any requisite consent of the City. Before placing small cell facilities or wireless support structures in the right-of-way, an operator must apply for and receive a general right-of-way permit under this Section. This provision shall not be construed to waive application fees or any other construction or work permit necessary for work in the City.**

**(4) The provisions of 1193.06 through 1193.065 shall not be construed to permit the construction and operation of wireline backhaul facilities, which shall continue to be subject to Chapter 1197 of the Codified Ordinances.**

**(b) *Pre-Application Conference*.**

**(1) *Purpose*. Applicants are strongly encouraged to contact the City and request a pre-application conference. This meeting will provide an opportunity for early coordination regarding proposed small cell facilities and wireless support structure locations and design, and the application submittal and review process, to avoid any potential delays in the processing of an application and deployment of small cell facilities and wireless support structures in the City.**

**(2) *Appointment Required*. An appointment is required for all pre-application conferences. Applicants must contact the designated City staff member as noted on the application form, who will provide applicants an appointment with all applicable City representatives in a timely manner.**

**(c) *Application Required*. In accordance with federal and state law and the Codified Ordinances, an operator may apply to the City to collocate a small cell facility on an existing wireless support structure and to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the city rights-of-way. Anyone seeking to collocate a small cell facility on an existing wireless support structure and/ or to construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the city rights-of-way shall first duly file a written application with the City, in accordance with the requirements in this section and additional requirements set forth in the Design Guidelines as modified from time to time by the City.**

**(d) *Required Application Materials*. Unless otherwise required by state or federal law, all applicants shall submit to the City materials and information associated with each application as outlined in the Design Guidelines in order for the application to be considered complete.**

**1193.061 APPLICATION REVIEW TIMEFRAMES AND PROCESS**

**(a) *Permit Application Review Timeframes.***

**(1) *Collocation of Small Cell Facilities on Existing Wireless Support Structures*. The City shall grant or deny its consent for requests to collocate, or to replace or modify a small cell facility on, or associated with, an existing wireless support structure not later than ninety (90) days after the date of filing by an entity of a completed application.**

**(2)** ***New Wireless Support Structures and Associated Small Cell Facilities*. The City shall grant or deny its consent for requests to construct, modify, or replace a wireless support structure associated with a small cell facility within the right-of-way not later than one hundred twenty (120) days after the date of filing by an entity of a completed application.**

**(3)** ***Wireless Support Structure and/or Small Cell Facilities Removal.* The City shall grant or deny its consent for requests to remove wireless support structures associated with small cell facilities from the right-of-way typical to the review timeframes for the General Right-of-Way Permit required for this activity.**

**(4)** ***Eligible Facilities Request.* The City shall approve Eligible Facilities Requests in accordance with Ohio Revised Code Chapter 4939, 47 C.F.R. 1.40001, and this Chapter not later than sixty (60) days after the date of filing by an entity of a submitted application.**

**(b)** ***Failure to grant or deny within prescribed timeframes*. If the City fails to approve or deny a request for consent under this section or a request for a relevant work permit within the timeframes required under 1193.061(A), provided the time period is not tolled under 1193.061(D) or extended with the written consent of the applicant and the Mayor, the request shall be deemed granted upon the requesting entity providing notice to the City that the time period for acting on the request has lapsed.**

**(c)** ***Application denials*.**

**(1) The City shall not unreasonably withhold or deny consent for small cell facilities and wireless support structures within the right-of-way.**

**(2) If a request for consent is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information as the applicant may reasonably request to obtain consent. The denial of consent shall not unreasonably discriminate against the entity requesting the consent.**

**(3) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the City, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.**

**(d)** ***Tolling of required timeframes*.**

**(1) The time periods required in §1193.061(A) may be tolled only:**

**(A) By mutual agreement between the entity requesting consent and the city;**

**(B) In cases where the city determines that the application is incomplete; or**

**(C) If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in §1193.061(A) due to the lack of resources of the city, then the City may toll the time limits as follows:**

**i. The time period may be tolled for up to twenty-one days for the first fifteen small cell facility or wireless support structure requests received by the city above the thresholds provided in the Table below within any consecutive thirty-day period:**

| Population of city at time Small Cell Facility or | Number of Applications: |
|---|---|

| Wireless Support Structure Applications are received: | |
|---|---|
| 30,000 persons or less | 15 applications or more |
| 30,001 to 40,000 persons | 20 applications or more |
| 40,001 to 50,000 persons | 25 applications or more |
| 50,001 to 60,000 persons | 30 applications or more |
| 60,001 to 100,000 persons | 60 applications or more |

**ii. Further, for every additional fifteen requests that the City receives above the thresholds provided in the Table above the City may toll the time period for those requests for up to fifteen days in addition to the time period provided in division (1)(c)(1) of this section.**

**iii. In no instance shall the City toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, the City shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.**

**(2) To toll the time period for incompleteness, the City shall provide written notice to the person requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.0313 of the Ohio Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, in accordance with state and federal law, does not toll the time period for incompleteness.**

**(3) The time period for granting or denying consent resumes when the entity makes a supplemental submission in response to the City's notice of incompleteness.**

**(4) If a supplemental submission is inadequate, the City shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice that delineated missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (1) to (3) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.**

**(e) *Consolidated application for multiple small cell facilities and/or wireless support structures*.**

**(1) Applicants seeking to construct, modify, collocate, or replace more than one small cell facility or more than one wireless support structure may file, at the applicant's discretion, a consolidated application for up to 30 small cell facility requests or up to 30 wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the small cell facilities or wireless support structures subject to the following:**

**(A) This single application may be filed for multiple small cell facilities or multiple wireless support structures only if they are of substantially the same type.**

**(B) The city may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.**

**(2) In the case of a consolidated application, the fees provided for in section 4939.0316 of the Ohio Revised Code and 1193.064 may be cumulative. However, the city, at its discretion may opt to reduce such fees in order to encourage consolidated application submittals.**

**(3) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Ohio Revised Code and 1193.061(D)(1) herein. A request by a single operator for a new or replacement wireless support structure and associated small cell facility constitutes one request.**

**(f) *Timeframe for completion of work authorized by permit*.**

**(1) Collocations of small cell facilities on existing wireless support structures and the construction of new wireless support structures and/or associated small cell facilities for which permits have been granted shall be completed by the operator or its agent within one hundred eighty days after issuance of the permit, unless:**

**(A) The City and the operator agree to extend this period; or**

**(B) A delay is caused by make-ready work for a City-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that:**

**i. The operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services; and**

**ii. The additional time to complete installation does not exceed three hundred sixty days after issuance of the permit.**

**(2) If divisions (1)(a) and (b) of this section cannot be met, the permit shall be void unless the City grants an extension in writing to the operator.**

**(g) *Small Cell Facility and Wireless Support Structure activities not requiring consent*.**

**(1) City consent shall not be required for either of the following activities conducted in the right-of- way:**

**(A) Routine maintenance of wireless facilities;**

**(B) The replacement of wireless facilities with wireless facilities that are consistent with the City's current design requirements and guidelines and that are either:**

**i. Substantially similar to the existing wireless facilities; or**

**ii. The same size or smaller than the existing wireless facilities.**

**1193.062 DESIGN GUIDELINES**

**(a) The Mayor shall promulgate detailed Design Guidelines with objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all of the following, which the city shall consider in reviewing an application:**

**(1) The location of any ground-mounted small cell facilities;**

**(2) The location of a small cell facility on a wireless support structure;**

**(3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, and landscaping;**

**(4) The design and appearance of a wireless support structure.**

**(b) The Design Guidelines shall provide examples of small cell facilities preferences including visual depictions.**

**(c) The provisions in this section shall not limit or prohibit the Mayor's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, Design Guidelines so long as the information, materials, or requirements do not conflict with state or federal law.**

**(d) The Mayor shall have authority to update or supplement the Design Guidelines to address relevant changes in law, technology, or administrative processes. In the event of any conflict between the Design Guidelines and the standards articulated in 1193.06 through1193.065 of this Chapter of the City of Canal Winchester Codified Ordinances, the language of 1193.06 through 1193.065 shall take precedence over the language of the Design Guidelines.**

**1193.063 STANDARD CONDITIONS OF PERMIT APPROVAL**

**(a) *Standard conditions of approval*. Permission to site small cell facilities and wireless support structures in the right-of-way shall be conditioned on compliance with the standard conditions of approval provided in this 1193.063. The Mayor or his or her designee may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.**

**(b) *Small Cell Facility Permit duration*. The City's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the city, except for generally applied permitting to safeguard the public health, safety, and welfare. An operator may remove its small cell facilities at any time subject to applicable permit requirements and may stop paying annual charges or fees under 1193.063(N).**

**(c) *Compliance with all applicable laws*.**

**(1) Permittees shall at all times maintain compliance with all applicable federal, state and local laws, regulations, ordinances, or other rules.**

**(2) If state or federal standards and regulations are amended, the owners of the small cell facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small cell facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.**

**(d) *Inspections; emergencies*. The City or its designee may inspect small cell facilities and wireless support structures in the right-of-way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.**

**(e) *Relocation or adjustment as requested by City.* If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the right-of-way at**

**no cost to the City, as long as such request similarly binds all users in or on such right-of-way. Such relocation or adjustment shall be completed in accordance with law.**

**(f) *Contact information for responsible parties*. Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person. All such contact information for responsible parties shall be provided to the Department of Public Works.**

**(g) *Indemnification.* Any operator who owns or operates small cell facilities or wireless support structures in the right-of-way shall indemnify, protect, defend, and hold the City 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.**

**(h) *Interference with public safety radio services*. In occupying or using the right-of-way, no person shall unreasonably compromise the public health, safety, and welfare. Permittees shall comply with the applicable provisions of 47 CFR 22.970-973 and 47 CFR 90.672-675 respectively, which define unacceptable interference, state the obligations of licensees to abate unacceptable interference, provide interference resolution procedures, and set forth a discretionary information exchange between public safety licensees and other licensees.**

**(i) *Adverse physical impacts on adjacent properties*. Permittee shall undertake all reasonable efforts to avoid undue adverse physical impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the small cell facility and/or wireless support structure.**

**(j) *Good condition required.* Small cell facilities and wireless support structures shall at all times be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the health, safety or welfare of any person or property. Examples of poor condition include, but are not limited to: peeling, flaking, or blistered paint; rust or other visible deterioration of materials; or failure to maintain required landscape screening. All small cell facilities and wireless support structures shall be subject to generally applicable property maintenance requirements and to visual inspection by code enforcement officers. Notices of violation shall be served as provided in the Property Maintenance Code. The notice shall provide that the operator has 30 days from date of service of the notice to appeal the notice to the Planning and Zoning Commission or remedy the violation. If that time expires without appeal or remedy to the satisfaction of the City, the City may remedy the violation and charge the costs of said remedy to the operator.**

**(k) *Graffiti abatement*. Permittee shall remove any graffiti on the small cell facility at permittee's sole expense.**

**(l) *RF exposure compliance*. All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.**

**(m) *Relocation for public improvement projects*. Permittee shall remove and relocate the permitted small cell facility and/or wireless support structure at permittee's sole expense to accommodate construction of a public improvement project by the City.**

**(n) *Removal of small cell facilities if use discontinued or abandoned.***

**(1) In the event that the use of a small cell facility and/or wireless support structure is discontinued, the owner or operator of the small cell facility and/ or wireless support structure shall submit a request for consent to remove the wireless support structure or small cell facility, as provided in §1193.061(A)(3), which shall serve as the notice required to the City of its intent to discontinue use and the date when the use shall be discontinued. If the small cell facility and/or wireless support structure is not removed within 365 days of discontinued use, the small cell facility and/ or wireless support structure shall be considered abandoned and the City may remove it at the owner's expense.**

**(2) Small cell facilities and wireless support structures determined by the City to be abandoned without notice from the owner may be removed by the City at the owner's expense to ensure the public health, safety, and welfare.**

**(3) The City reserves the right to inspect and to request information from the operator, which the operator shall provide following such request, as to the continued use of the operator's small cell facility(ies) or wireless support structure(s) within the right-of-way.**

**1193.064 SAFETY REQUIREMENTS**

**(a) *Prevention of failures and accidents.* Any person who owns a small cell facility and/or wireless support structure sited in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.**

**(b) *Compliance with fire safety and FCC regulations*. Small cell facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.**

**(c) *Surety bond or equivalent financial tool for cost of removal*. All owners must procure and provide to the city a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of 1193.06 through 1193.065. The bond or equivalent financial method must specifically cover the cost of removal of unused or abandoned small cell facilities and/ or wireless support structures or damage to city property caused by an operator or its agent of each small cell facility and/ or wireless support structure in case the city has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.**

**1193.065 RECOVERY OF COSTS**

**(a) *Application processing fee*. For processing an application for consent, the City may charge a fee for each small cell facility and wireless support structure requested as prescribed under section 4939.0316 of the Ohio Revised Code and as listed on the associated application forms which shall be made available by the Department of Public Works. The City may adjust this fee ten per cent every five years, rounded to the nearest five dollars.**

**(b) *Annual collocation fee.* For reimbursement for operator's attachment of small cell facilities to wireless support structures owned or operated by the city and located in the right-of-way, the City may charge an annual fee as prescribed in 4939.022 of the Ohio Revised Code and as listed on associated application forms which shall be made available by the Department of Public Works. The city may adjust this fee ten per cent every five years, rounded to the nearest five dollars.**

**(c) *Tax liabilities and assessments not applicable*. Placement of small cell facilities in the right-of-way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject the City to any state or local tax liabilities or assessments.**

**1193.066 SEVERABILITY**

**The provisions of 1193.06 through 1193.065 of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances is held**

**invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.**

Section 2. The Council hereby determines that all deliberations and votes of a public body regarding this Ordinance were conducted in an open meeting in compliance with Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance shall take effect at the earliest date allowed by law.

DATE PASSED _____ _____
PRESIDENT OF COUNCIL

ATTEST_____ _____
CLERK OF COUNCIL MAYOR

APPROVED AS TO FORM:

_____
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

_____
CLERK OF COUNCIL

0128850.0615530 4848-8688-8008v4

CANAL WINCHESTER
Established 1828

To: Amanda Jackson, CMC, Clerk of Council

From: Andrew Moore, Planning and Zoning Administrator

Date: September 11, 2018

RE: Application ZA-18-004

## RECOMMENDATION

Regular Meeting of Planning and Zoning Commission held **September 10, 2018**

**Motion** by Mike Vasko, seconded by Brad Richey, to recommend to council approval of ZM-18-004; to consider a Zoning Text Amendment(s) to Chapter 1193 Wireless Communication Facilities. The proposed amendments have been initiated by the Planning and Zoning Commission. Voting yes: Bill Christensen, Joe Donahue, Brad Richey, Michael Vasko, Joe Wildenthaler and June Konold. **Motion Carried 6-0**

Andrew Moore
Planning and Zoning Administrator