



## COUNCIL UPDATE

May 27, 2020

### MEETINGS & REMINDERS

Please note meetings are being held as webinars and conference calls. Information for residents to participate may be found on the [clevelandheights.com](http://clevelandheights.com) calendar.

Thursday, May 28	-	5:00 p.m.	-	Community Services and Recreation Committee
Monday, June 1	-	6:30 p.m.	-	Committee of the Whole
	-	7:30 p.m.	-	City Council
Tuesday, June 2	-	7:00 p.m.	-	Architectural Board of Review
Monday, June 8	-	5:00 p.m.	-	Planning and Development Committee
	-	6:30 p.m.	-	Committee of the Whole

### LEGISLATION

#### *Discussion Items*

- **Public Meetings, Second Reading.** An Ordinance amending Chapter 107, "Public Meetings," of the Codified Ordinances of Cleveland Heights by repealing Section 107.01(c)(9) to remove the ability of Council or a board or commission of the City to enter into executive session to meet in retreat not more than four times per year to discuss general plans for the future, or general issues before the City
- **Voice Vote, First Reading.** An Ordinance amending Section 111.13, "Action of Council," of Chapter 111, Council, of Part One, Administrative Code, of the Codified Ordinances of Cleveland Heights to streamline voting procedures by allowing Council to approve motions by voice vote
- **Recusal Process, First Reading.** An Ordinance amending Section 111.21, "Voting," of Chapter 111, Council, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights to allow Council members to recuse themselves from voting due

to a conflict of interest

- **Revenge Porn Victim Protection, Second Reading.** An Ordinance amending Chapter 749, “Fair Practices” to include the nonconsensual dissemination of a person’s private sexual images as a prohibited, discriminatory rationale for the purposes of fair employment, education, and housing practices

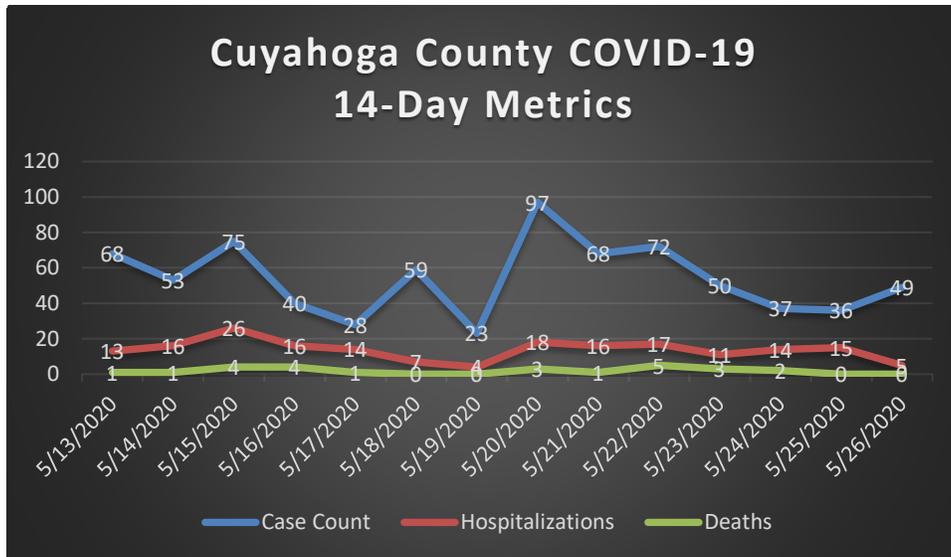
***Consent Items\****

- **Wage and Salary Ordinance Amendment, Second Reading.** An Ordinance amending Section 6 of Ordinance No. 17-2020, “Wage and Salary Ordinance,” to provide clarity and fill-in gaps on various provisions
- **Gun Violence Awareness Day.** A Resolution proclaiming June 5, 2020 to be National Gun Violence Awareness Day in the City of Cleveland Heights
- **LGBTQ Pride Month.** A Resolution declaring June 2020 to be LGBTQ Pride Month
- **Small Cell Amendment.** An Ordinance amending Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures,” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights
- **EDGE Membership.** A Resolution ratifying the City’s membership and participation in the Eastside Departments Group Enforcement (“EDGE”) Agency

*\*Note – Consent items are not discussed during the Council meeting unless the item is removed by a member of Council. Once removed, it will need to be voted on separately.*

**CORONAVIRUS – READINESS & RESPONSE UPDATE**

As of this writing, Ohio has 33,439 total cases of COVID-19, 5,700 hospitalizations, and 2,044 deaths. Cuyahoga County has 4,137 cases (+625 cases from last week) and 224 confirmed deaths. 35 more Cuyahoga County residents have died from COVID-19 since last week’s reporting. The zip code reporting continues to show that Cleveland Heights is a hotspot for positive cases. The 14-day trend for Cuyahoga County is included below:



City Hall will remain closed to the public through June 30 as we work to transition off-site staff back to the workplace in safe manner. The phased reopening planning continues. The decision to reopen City facilities to the public will be based on our ability to protect the health and safety of employees and the public as well as minimize and control the spread of the virus. We continue to monitor the evaluation factors outlined previously which include but are not limited to:

- 2 weeks of a consistent downward trend in infection rates as recommended by the CDC
- Ability to maintain minimum 6ft distancing and limit gathering
- Ability to carry out sanitizing/cleaning of high touch and common surfaces

Per the 14-day data, we have not yet reached a leveling off or decline in infection rates in Cuyahoga County and as previously noted, our community continues to lead the County in cases. We continue to be challenged by disruptions in the supply chain for items like plexiglass, and sanitation supplies though we have made substantial progress on this front to begin to prepare staff to return. We will likely still need to stagger work schedules and use telework/work from home strategies where employees work in open areas versus enclosed offices. In the meantime, we will continue to focus our efforts on essential service delivery under our current work arrangements.

**Economic Development Response to the COVID-19 Crisis:** The reopening process for businesses in Ohio (<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/>) continues in Cleveland Heights as we have seen more of our retail businesses, restaurants and personal services businesses (barbershops, salons, etc.) resume operations, there is also a sizable portion of our business community that is taking a wait and see approach or continuing to offer limited curbside/takeout/delivery options.

- Staff is preparing recommendations for City Council regarding expanding outdoor dining options in parking lots, the right of way and other public spaces. Staff has asked for and continues to receive feedback from the business community on this issue, as well as the need for designated curbside pickup locations.
- Economic Development and Community Relations staff has launched a new initiative to engage the community and encourage them to support our local businesses – Shop Local Bingo. Details can be viewed on the City’s website: <https://www.clevelandheights.com/1299/Shop-Local-Bingo>. The initial response from the community – residents and businesses – has been positive. The initiative has also been featured on Cleveland.com (<https://www.cleveland.com/community/2020/05/cleveland-heights-says-bingo-to-local-shoppers-businesses-with-new-promotion.html>) and Channel 5 News.
- Staff is holding regular conference calls with the SIDs and other business districts to provide updates and get feedback from the business community.
- Staff is finalizing guidelines for the new CDBG COVID-19 funds allocated for economic development. This includes funding for “adaptation grants” for businesses to update their operations and Microenterprises (existing or new businesses with five or fewer employees) responding to the current crisis.
- Staff continues to respond to calls and emails from individual businesses with assistance in connecting to resources and information related to COVID-19 programs.

## **OTHER UPDATES**

### **Community Services**

- All Council applicants (19) were contacted regarding their status. The 4 finalists were advised that they would be contacted when next steps were in place.
- Public Relations launched the Bingo game to encourage patrons to visit shops throughout the City.
- Interviews were coordinated regarding SLB with Tommy’s and the Wine Spot for Channel 5.
- Updates from the City Manager were prepared and posted on the website.
- There were increased social media posts regarding happenings around the City.

- Signage has been designed and ordered to make it clearer where Departments are located in City Hall. This will hopefully make it easier for traffic flow when the building reopens.

### **Parks and Recreation**

- Staff is working on virtual recreation activities to go live in June.
- Residents can participate in live fitness training 5 days week on the CH Recreation Facebook page. Classes typically start between 10am or 11am. We offer cardio, strength training, zumba gold with new classes coming soon. All sessions are free.
- Senior Center continues to conduct wellness checks on seniors and coordinate food and mask delivery as well. Staff is researching ways to address the access to technology issues many seniors face in the weeks to come. We are also looking at safe ways to resume the senior transportation program for doctors appointments and grocery store trips.

### **Police**

- On June 1, 2020, the Police Department will resume enforcement of the Rush Hour parking restrictions on our streets. This information has been posted on NextDoor and Facebook to alert the residents:

Beginning June 1, 2020, the Cleveland Heights Police Department will resume enforcement of all Rush Hour restrictions on the streets within the City. Since the lifting of the “Stay at home order” and more people returning to work, we want to ensure the safety of all the pedestrians, bicyclists and motorists on our roadways and this includes ensuring that all Rush Hour lanes are clear of parked vehicles during posted times. Please make sure to read and obey all parking signage relating to Rush Hour parking restrictions and Tow-a-way zones to ensure that your vehicle is parked legally.

If you have any questions or concerns, please contact the Police Department at 216-321-1234 for assistance.

- Over Memorial Day weekend, the Police Department was fairly busy responding to a variety of calls for service. From Friday, May 22nd – Monday, May 25th, Officers responded to over 465 calls. Of these calls, only six were considered COVID complaints. The majority of other calls consisted of alarms, animal complaints, suspicious activity, disturbances and noise complaints. In addition a

resident reported observing two juveniles checking the car doors of the vehicles in his driveway around 1:47 am on Boynton. The two juveniles were located and identified. While the resident did not want to pursue any charges, both juveniles were charged with curfew since they are only 16 and 17 years old. This type of incident is a good reminder to all to remember to lock your car doors.

**Public Works**

**Sanitary Sewer Evaluation Survey**

	<b>Requirements</b>	<b>Due</b>
Phase 1 SSES	CCTV - 393,658 LF	Complete
Phase 2 SSES	CCTV – 224,792 LF	30-Jun-21
Phase 1 SSES	1,980 Manhole Inspections	Complete
Phase 2 SSES	1,125 Manhole Inspections	30-Jun-21
CMOM	132,000 LF/yr Pipe Cleaned	31-Dec-20
Model	Calibrated Model	Complete

**Completed Through May 8, 2020**

	<b><u>Completed Thru Mat May 8, 2020 (LF)</u></b>	<b><u>Overall Remaining (LF)</u></b>	<b><u>Overall Remaining (%)</u></b>
<b>CCTV Phase 1</b>	395,097	0	0%
<b>CCTV Phase 2</b>	64,264	160,528	71%
<b>MHs Phase 1</b>	1,978	0	0%
<b>MHs Phase 2</b>	1,115	10	1%
<b>Cleaning Total</b>	542,086	-	-
<b>Cleaning (2018) only</b>	173,355	-	-
<b>Cleaning (2019) only</b>	304,188	-	-

**Cleaning (2020) only**                      64,543                      67,457                      51%

Work Completed by Entity

	<b><u>City</u></b>	<b><u>Contractor</u></b>	<b><u>County</u></b>
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CCTV (Phase 1)	19% 75,464 LF	54% 215,287 LF	27% 104,346 LF
CCTV (Phase 2)	6% 13,051 LF	14% 30,838 LF	9% 20,375 LF
Cleaning (2020) only	10% 13,330 LF	23% 30,838 LF	15% 20,375 LF
Cleaning Total	31% 166,215 LF	45% 243,821 LF	24% 132,040 LF

**Model Update**

Tasks	% Complete
1. Flow and rainfall Analysis	100%
2. Model Expansion in GIS	100%
3. Model Expansion in Infoworks ICM	100%
4. Delamere - Model Setup	100%
5. Delamere - DWF and WWF calibration	100%
6. Delamere - Capacity evaluation	100%
7. Delamere - Alternative development	100%
8. DWF and WWF Calibration for all flow meters	100%

\*DWF = dry weather flow, WWF = wet weather flow

**Other**

- **#20-01 – 2020 Street Resurfacing & ADA Curb Ramp Replacement Program -**  
We are in the process of executing the contracts. It is projected that work will start in two weeks.
- **#20-02 – 2020 Surface Treating Program -** Partial depth pavement repairs have been made on the project streets, and the contractor has been working on asphalt patching. We anticipate that the contractor will start chip sealing the streets in the next couple weeks.

- **19-03 – 2020 Pavement Striping Program** - Work has been rescheduled to start in late June.
- **Safe Routes to Schools – FY2020 – ODOT PID 103700** - The project was let on May 21st by the Ohio Department of Transportation, and Terrace Construction was the apparent low bidder at \$141,901.31. ODOT will award and administer the contract. We anticipate that ODOT will host a pre-construction meeting in the next couple weeks, and that work should be underway by July.
- **Solar Panel Update** - We are in the process of signing the contracts and Enerlogics continues with working on the design of the solar systems.
- **#20-03 – Selwyn Waterline Replacement & Road Resurfacing** - Work began on Tuesday, May 26th with mobilization and the layout of the temporary bypass watermain.
- **#20-05 – Fire Vehicle Source Capture Exhaust Systems (Bid on Behalf of the Fire Department)** - We are scheduled to meet with the Contractor on Wednesday, May 27th, and anticipate that work will begin in the next couple of weeks.
- **Shannon Road Waterline Replacement and Road Resurfacing** - This project is currently under design but has been put on a temporary hold.



# CLEVELAND HEIGHTS

## Committee of the Whole

**June 1, 2020**

**6:30 p.m.**

**Agenda**

1. Legislation  
*Goal: Review legislation*
  
2. Outdoor Dining Update  
*Goal: Staff will provide an update on outdoor dining expansion options being considered*



# CLEVELAND HEIGHTS

## AGENDA (tentative) – CLEVELAND HEIGHTS CITY COUNCIL MEETING

Monday, June 1, 2020

Online Only

Regular Meeting

7:30 p.m.

<http://www.youtube.com/c/cityofclevelandheights/live>

- 1) Meeting called to order by Mayor
- 2) Roll Call of Council Members
- 3) Excuse absent members
- 4) Approval of the minutes of the regular Council meeting held Monday, May 4, 2020
- 5) Personal communications received from citizens (via electronic mail)
- 6) Report of the City Manager
- 7) Report of the Clerk of Council
- 8) Committee Reports
  - a.) FINANCE COMMITTEE
  - b.) MUNICIPAL SERVICES COMMITTEE
  - c.) PLANNING AND DEVELOPMENT COMMITTEE
  - d.) PUBLIC SAFETY AND HEALTH COMMITTEE
  - e.) ADMINISTRATIVE SERVICES COMMITTEE

**ORDINANCE NO. 23-2018 (AS), *Second Reading.*** An Ordinance amending Chapter 107, “Public Meetings,” of the Codified Ordinances of Cleveland Heights by repealing Section 107.01(c)(9) to remove the ability of Council or a board or commission of the City to enter into executive session to meet in retreat not more than four times per year to discuss general plans for the future, or general issues before the City

Introduced by Council Member \_\_\_\_\_

Vote \_\_\_\_\_

For                      Against                      No. Reading

**ORDINANCE NO. 50-2020.** An Ordinance amending Section 111.13, “Action of Council,” of Chapter 111, Council, of Part One, Administrative Code, of the Codified Ordinances of Cleveland Heights to streamline voting procedures by allowing Council to approve motions by voice vote

Introduced by Council Member \_\_\_\_\_

Vote \_\_\_\_\_

For                      Against                      No. Reading

**ORDINANCE NO. 51-2020.** An Ordinance amending Section 111.21, “Voting,” of Chapter 111, Council, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights to allow Council members to recuse themselves from voting due to a conflict of interest

Introduced by Council Member \_\_\_\_\_

Vote \_\_\_\_\_

For                      Against                      No. Reading

**ORDINANCE NO. 108-2019 (AS), *Second Reading.*** An Ordinance amending Chapter 749, “Fair Practices” to include the nonconsensual dissemination of a person’s private sexual images as a prohibited, discriminatory rationale for the purposes of fair employment, education, and housing practices

Introduced by Council Member \_\_\_\_\_

Vote \_\_\_\_\_

For                      Against                      No. Reading

**f.)      COMMUNITY RELATIONS AND RECREATION COMMITTEE**

**9)      Consent Agenda**

*Note: Individual Consent Agenda items are not discussed separately during the Council meeting, unless removed from the Consent Agenda on the request of a member of Council. Once an item is removed from the Consent Agenda it will be placed on the Regular Agenda.*

**ORDINANCE NO. 23-2020 (AS), Second Reading.** An Ordinance amending Section 6 of Ordinance No. 17-2020, “Wage and Salary Ordinance,” to provide clarity and fill-in gaps on various provisions

**RESOLUTION NO. 52-2020 (PD).** A Resolution proclaiming June 5, 2020 to be National Gun Violence Awareness Day in the City of Cleveland Heights

**RESOLUTION 53-2020 (CRR).** A Resolution declaring June 2020 to be LGBTQ Pride Month

**ORDINANCE NO. 54-2020 (MS).** An Ordinance amending Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures,” of Part Nine, Streets, Utilities and Public Services Code of the Codified Ordinances of Cleveland Heights

**RESOLUTION NO. 55-2020 (PSH).** A Resolution ratifying the City’s membership and participation in the Eastside Departments Group Enforcement (“EDGE”) Agency

Motion to suspend rules by Council Member \_\_\_\_\_

Vote      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
            For              Against              No. Reading

Motion to adopt by Council Member \_\_\_\_\_

Vote      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
            For              Against              No. Reading

**10) Mayor’s Report**

**11) Adjournment**

**NEXT MEETING OF COUNCIL: MONDAY, JUNE 15, 2020**

Proposed: 06/01/2020

ORDINANCE NO. 23-2018 (AS), *Second Reading*

By Council Member Stein

An Ordinance amending Chapter 107, “Public Meetings,” of the Codified Ordinances of Cleveland Heights by repealing Section 107.01(c)(9) to remove the ability of Council or a board or commission of the City to enter into executive session to meet in retreat not more than four times per year to discuss general plans for the future, or general issues before the City.

WHEREAS, the proposed changes to Chapter 107 would align Cleveland Heights’ public meetings policies more closely with state law; and

WHEREAS, the Council has determined that proposed amendments to Chapter 107 are in the best interest of the City, its residents, and the general goal of civic transparency.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The existing Section 107.01(c)(9) of the Codified Ordinances of Cleveland Heights shall be, and is hereby, repealed in its entirety.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

Proposed: 06/01/2020

ORDINANCE NO. 50-2020 (AS), *First Reading*

By Council Member

An Ordinance amending Section 111.13, "Action of Council," of Chapter 111, *Council*, of Part One, Administrative Code, of the Codified Ordinances of Cleveland Heights to streamline voting procedures by allowing Council to approve motions by voice vote.

WHEREAS, the current Section 111.13, "Action of Council," of Chapter 111, *Council*, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights requires that votes be taken by 'ayes' and 'nays'; and

WHEREAS, the proposed amendment to Section 111.13 would help streamline Council meetings; and

WHEREAS, this Council has determined that the proposed amendment to Section 111.13 is in the best interest of the City, its residents, and the general goal of civic efficiency.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 111.13, "Action of Council," of Chapter 111, *Council*, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

Council shall act by ordinance or resolution duly adopted at a regular, special or emergency meeting. Each ordinance, resolution and motion shall require the concurrence of at least four (4) members of Council for its passage or adoption, ~~and the vote upon its passage or adoption shall be taken by "ayes" and "nays" and entered on the journal.~~ The vote upon its passage or adoption shall be taken by voice vote, and the vote of each member shall be individually entered on the journal, except that the presiding officer may require a roll call vote at his or her discretion. Further, a roll call vote shall be required whenever the vote is not unanimous, or for any motion to adjourn into executive session, or upon the request of any member of Council or the Clerk of Council, or when otherwise required by the Codified Ordinances or general law. In the event of a roll call vote, the vote taken by the "ayes" and "nays" shall be entered upon the journal.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

ORDINANCE NO. 50-2020 (AS)

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

Proposed: 06/01/2020

ORDINANCE NO. 51-2020 (AS), *First Reading*

By Council Member

An Ordinance amending Section 111.21, "Voting," of Chapter 111, *Council*, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights to allow Council members to recuse themselves from voting due to a conflict of interest.

WHEREAS, the current Section 111.21, "Voting," of Chapter 111, *Council*, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights requires unanimous consent of other present Council members in order for a Council member to recuse himself or herself from voting on any question; and

WHEREAS, such unanimous consent should not be required where a Council member has a personal or financial interest in the matter under consideration or when the Council member reasonably believes that voting on a matter could constitute a violation of his or her ethical obligations under the law.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 111.21, "Voting," of Chapter 111, *Council*, of Part One, Administrative Code, of the Codified Ordinances of the City of Cleveland Heights shall be and hereby is amended to read as follows:

Every member present shall vote on any question on the call for ~~the "ayes" and "nays"~~ a voice or roll call vote unless ~~excused by the unanimous consent of the other members present, and any member not being so excused who fails or refuses to vote on any question when the "ayes" and "nays" are being taken shall be counted as voting in the affirmative.~~ the member recuses themselves. Whenever a member has a personal or financial interest in any matter under consideration or believes that voting on the matter could for any reason constitute a violation of an ethics law, the member shall disclose the interest or ethical concern and recuse themselves from voting. Any member present, not recusing themselves from voting, who fails or refuses to vote on any question when the voice or roll call vote is being taken shall be counted as voting in the affirmative.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

ORDINANCE NO. 51-2020 (AS)

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

Proposed: 06/01/2020

ORDINANCE NO. 108-2019 (AS), *Second Reading*

By Council Member Seren

An Ordinance amending Chapter 749, “Fair Practices” to include the nonconsensual dissemination of a person’s private sexual images as a prohibited, discriminatory rationale for the purposes of fair employment, education, and housing practices.

WHEREAS, the proposed changes to Chapter 749 will align Cleveland Heights’ fair practices policies with current technologies and social trends; and

WHEREAS, the Council has determined that these proposed amendments to Chapter 749 are in the best interest of the City, its residents, and the general goal of fair practices and the protection of civil rights.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 749.03(n), of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to read as follows:

(n) The terms ‘Discriminate,’ ‘Discriminating,’ or ‘Discrimination,’ mean any act, policy, or practice that, regardless of intent, has or had the effect of subjecting any individual to different treatment as a result of that individual’s Age, race, color, religion, Sex, Familial Status, national origin, Disability, Sexual Orientation, ~~or~~ Gender Identity or Expression, or the nonconsensual dissemination of that individual’s private sexual images, except as otherwise set forth in this Chapter, and except that Age may be the basis of different treatment concerning Housing Practices (see Section 749.07) and/or Education Practices (see Section 749.14).

SECTION 2. Section 749.12(b), of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to read as follows:

(b) To establish, announce, or follow a policy of denying or limiting the employment or employment opportunities of any individual or group of individuals because of race, color, religion, Sex, Familial Status, national origin, Disability, Sexual Orientation, ~~or~~ Gender Identity or Expression, or the nonconsensual dissemination of that individual’s or group of individuals’ private sexual images;

SECTION 3. Section 749.12(c), of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to read as follows:

(c) Publish or cause to be published any notice or advertisement relating to employment or employment opportunities which contains any specification or limitation as to race, color, religion,

ORDINANCE NO. 108-2019 (AS)

Sex, Familial Status, national origin, Disability, Sexual Orientation,~~or~~ Gender Identity or Expression, or the nonconsensual dissemination of an individual's private sexual images;

SECTION 4. Section 749.12(d), of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to read as follows:

(d) Require of any applicant as a condition of employment or employment opportunities any information concerning the applicant's age, race, color, religion, Sex, Familial Status, national origin, Disability, Sexual Orientation,~~or~~ Gender Identity or Expression, or the nonconsensual dissemination of that individual's private sexual images; or

SECTION 5. Section 749.13(a), of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to read as follows:

(a) For any Educational Institution to deny, restrict, abridge, or condition the use of or access to any educational facilities or educational services to any individual who is otherwise qualified on account of race, color, religion, Sex, Familial Status, national origin, Disability, Sexual Orientation,~~or~~ Gender Identity or Expression, or the nonconsensual dissemination of that individual's private sexual images;

SECTION 6. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 7. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

Proposed: 06/01/2020

ORDINANCE NO. 23-2020 (AS), *Second Reading*

By Council Member Seren

An Ordinance amending Section 6 of Ordinance No. 17-2020, “Wage and Salary Ordinance,” to provide clarity and fill-in gaps on various provisions; and declaring an emergency.

WHEREAS, on March 2, 2020, this Council, pursuant to Article V, Section 4 of the Charter of the City of Cleveland Heights and Section 139.21 of the Codified Ordinances of the City of Cleveland Heights, adopted Ordinance No. 17-2020, establishing salary schedules, position classifications and other compensation, and benefits for officers and employees of the City; and

WHEREAS, this Council wishes to amend Ordinance No. 17-2020 to provide further clarity on various terms contained therein and fill-in various gaps.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 6 of Ordinance No. 17-2020, the “Wage and Salary Ordinance,” shall be and hereby is amended to henceforth read as follows:

**SECTION 6. VACATION**

(a) All full-time permanent city employees shall accrue vacation leave according to the following schedule:

	<u>ALL FULL-TIME PERMANENT CITY EMPLOYEES</u>	
	<u>Length of Service</u>	<u>Accrual Per Pay</u>
<u>Period</u>		
	Up to and including the sixth year	3.08 hours
	7 up to and including 12 years	4.60 hours
	13 up to and including 18 years	6.20 hours
	19 years or more	7.70 hours

Accrual of vacation days shall be by pay period and begin in the pay period in which the employee’s first day of employment occurs. Vacation leave requests will be granted by the department heads in line with the needs of the department. To accommodate scheduling needs, vacation leave may be taken before actually accrued upon approval of the City Manager. When an employee terminates his employment with the city, the City Manager shall deduct from the employee’s final pay periods the number of hours of vacation leave taken but not yet accrued. No more than the amount of vacation accrued in the previous twelve-month period may be carried forward into the next calendar year.

ORDINANCE NO. 23-2020 (AS), *Second Reading*

Employees shall be paid for vacation leave accrued, but unused, at the time of separation provided the paid vacation does not exceed the employee's eligible annual accrual and further provided that such employee has worked six (6) months or more.

(b.) Permanent part-time employees with a base schedule of 20 or more hours per week will accrue vacation. Permanent part-time employees shall accrue hours based on the actual hours worked in the preceding pay period divided by 80 hours multiplied by the accrual per pay period.

<u>Period</u>	<u>Length of Service</u>	<u>Accrual Per Pay</u>
	Up to and including the fourth year	1.54 hours
	5 up to and including 6 years	3.08 hours
	7 up to and including 11 years	4.6 hours
	12 up to and including 17 years	6.2 hours
	18 years or more	7.7 hours

No more than the amount of vacation accrued in the previous twelve-month period may be carried forward into the next calendar year.

Employees shall be paid for vacation leave accrued, but unused, at the time of separation provided the paid vacation does not exceed the employee's eligible annual accrual and further provided that such employee has worked six (6) months or more.

All other full-time employees who transfer from any public agency in the State of Ohio to the City of Cleveland Heights may receive credit for the length of their consecutive service in the former public agency, in accordance with the provisions of the Administrative Code, for purposes of determining accrual of vacation leave during their employment with the City of Cleveland Heights. Accrual of vacation for transfer employees shall be determined according to the schedule set out in subsection

(a). Employees who wish to receive credit for their prior public service shall obtain a certified copy of their employment record from their prior employer.

Vacation leave granted under this Section shall be administered pursuant to rules adopted by the City Manager.

ORDINANCE NO. 23-2020 (AS), *Second Reading*

(b). Eligible permanent part-time employees hired on or before April 1, 2019 will receive a one time lump sum deposit of vacation hours equal to one week of their base schedule deposited into their vacation bank the first paycheck in April 2020. Accruals shall begin with the first full pay period in April 2020.

(c). For purposes of this Section, the hourly rate of payment for accrued vacation leave shall be determined by the following formula: annual base pay at the time of employee separation divided by 2,080 hours.

SECTION 2. All remaining provisions of Ordinance No. 17-2020 shall remain in full force and effect.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the amendments to Ordinance No. 17-2020 to be effective at the earliest time possible to provide sufficient clarity to City employees as to their compensation and benefits. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

Proposed: 06/01/2020

RESOLUTION NO. 52-2020 (CRR)

By Council Member

A Resolution proclaiming June 5, 2020 to be *National Gun Violence Awareness Day* in the City of Cleveland Heights; and declaring an emergency.

WHEREAS, every day, ninety-six (96) Americans are killed by gun violence and on average there are nearly 13,000 gun homicides every year; and

WHEREAS, Americans are twenty-five (25) times more likely to be murdered with guns than people in other developed countries; and

WHEREAS, protecting the public's safety is the City Manager's highest responsibility; and

WHEREAS, support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from dangerous people; and

WHEREAS, mayors, city managers, and law enforcement officers know their communities best, are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their citizens safe; and

WHEREAS, in January 2013, Hadiya Pendleton, a teenager who marched in President Obama's second inaugural parade and was tragically shot and killed just weeks later, should be now celebrating her 23rd birthday on June 2, 2020; and

WHEREAS, to help honor Hadiya – and the ninety-six (96) Americans whose lives are cut short and the countless survivors who are injured by shootings every day – a national coalition of organizations has designated June 5, 2020, the first Friday in June, as the 6th annual National Gun Violence Awareness Day; and

WHEREAS, the idea was inspired by a group of Hadiya's friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods and orange is a color that symbolizes the value of human life; and

WHEREAS, anyone can join this campaign by pledging to Wear Orange on June 5, the first Friday in June in 2020, to help raise awareness about gun violence; and

WHEREAS, by wearing orange on June 5, 2020, Americans will raise awareness about gun violence and honor the lives and lost human potential of Americans stolen by gun violence; and

RESOLUTION NO. 52-2020 (CRR)

WHEREAS, this Council is committed to reducing gun violence and pledges to do all we can to keep firearms out of the wrong hands, and encourage responsible gun ownership to help keep our children safe; and

WHEREAS, this Council passed Resolution No. 41-2018 to urge state and federal governments to enact common sense gun laws and mental health legislation to help reduce gun violence; and

WHEREAS, the City of Cleveland Heights is honored to take part in the annual observance of *National Gun Violence Awareness Day* in the hopes to help honor and remember all victims and survivors of gun violence and to declare that we as a country must do more to reduce gun violence.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council hereby declares the first Friday in June, June 5, 2020, to be *National Gun Violence Awareness Day* in the City of Cleveland Heights and encourages residents to wear orange on this day to show solidarity with the families who have lost a family member to gun violence, the communities that are affected, and the hope that bringing awareness will help continue the battle against gun violence.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to recognize *National Gun Violence Awareness Day* on a timely basis. Wherefore, provided it receives the affirmative note of five (5) or more members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

Proposed: 06/01/2020

RESOLUTION NO. 53-2020 (CRR)

By Council Member

A Resolution declaring June 2020 to be *LGBTQ Pride Month*; and declaring an emergency.

WHEREAS, the City of Cleveland Heights historically has been a community that values and seeks diversity in its residents; and

WHEREAS, forty-one (41) years ago, in 1976, this Council committed itself to a Resolution establishing the “Nine-Point Plan” to promote a well-maintained, full-service residential community that is racially, religiously, and ethnically diverse; and

WHEREAS, in 1982, this Council reaffirmed its commitment to diversity and tolerance by prohibiting discrimination in City employment based upon sexual orientation, as well as race, religion, sex, disability, and ethnic status; and

WHEREAS, in 2001, the Visioning Committee found that the overwhelming majority of Cleveland Heights residents consider diversity to be one of the community’s strongest assets and that the residents’ lives were enriched because of the varying experiences and perspectives brought by people of different ethnicities, religion, race, socio-economic status, and sexual orientation; and

WHEREAS, in 2002, this Council extended employment benefits to domestic partners of City employees; and

WHEREAS, in 2003, the citizens of Cleveland Heights initiated and passed an ordinance to provide for the establishment of a domestic partner registry which was the first of its kind in the State of Ohio; and

WHEREAS, in 2013 and 2014, this Council expanded the role and jurisdiction of the Fair Housing Board to hear and investigate sexual orientation and gender identity and expression discrimination complaints occurring in places of public accommodation, education, and employment , as well as in a housing context, and renamed the Board the “Fair Practices Board”; and

WHEREAS, in 2018, this Council passed a resolution supporting the Ohio Fairness Act to ensure that all Ohio residents are able to enjoy basic freedom from discrimination where they work, live, and engage in commerce throughout the state; and

WHEREAS, in an effort to further build and strengthen our communities and nation, one should value the LGBTQ (lesbian, gay, bisexual, transgender, and queer) community members as colleagues and neighbors, daughters and sons, sisters and brothers, and friends and partners; and

RESOLUTION NO. 53-2020 (CRR)

WHEREAS, this Council recognizes that much has been accomplished over the last generation to promote equality and justice, as society and its law reflect that diversity and tolerance are strength in a progressive culture, yet many challenges still remain, as prejudice against members of the LGBTQ community can still erupt into acts of hatred, violence, and discrimination; and

WHEREAS, the City of Cleveland Heights is committed to equal rights for all Americans and is therefore proud to support all those committed to justice and equality in a crusade to outlaw discriminatory laws and practices and to protect the LGBTQ community from prejudice and persecution; and

WHEREAS, many communities and organizations across the United States will celebrate June 2020 as LGBTQ Pride Month to recognize the significance that LGBTQ Americans have made throughout our nation's history.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council does hereby: (i) proclaim June 2020 to be LGBTQ (lesbian, gay, bisexual, transgender, and queer) Pride Month; (ii) recognize the LGBTQ community for its many and varied contributions that have enriched our civic life; (iii) celebrate the progress made in creating a society more inclusive and accepting of the LGBTQ community; and (iv) affirm continued efforts to break down the walls of fear and prejudice and work to build a bridge to understanding and tolerance, until the members of the LGBTQ community are afforded the same rights and responsibilities as other Americans.

SECTION 2. The Clerk of Council is hereby directed to send a copy of this Resolution to the President of the United States, Ohio Senators Rob Portman and Sherrod Brown, Congresswoman Marcia Fudge, Governor Mike DeWine, Ohio Senate President Larry Obhof, Ohio House Speaker Larry Householder, Ohio Senator Sandra Williams, and Ohio Representative Mary Kaptur.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to join with other communities in this celebration in a timely manner. Wherefore, provided it received the affirmative vote of

RESOLUTION NO. 53-2020 (CRR)

five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

TO: Tanisha R. Briley, City Manager  
FROM: William R. Hanna, Director of Law  
Joe Kickel, Capital Projects Manager  
RE: Summary of New Revisions to Small Cell Regulations (Chapter 943)  
DATE: May 6, 2020

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On September 27, 2018, the Federal Communications Commission (FCC) issued an order that limited and revised state and local authority to manage and regulate certain small cell wireless installations within public rights-of-way nationwide. It came on the heels of revisions to Ohio Revised Code Chapter 4939, effective August 1, 2018, to codify small cell wireless rules related to municipal right of way and addressed, among other things, small cell installation-related fees, application processing times and local aesthetic regulations. The FCC's order took effect on January 14, 2019, and Chapter 943 was revised in May 2019 to reflect it. As applications for small cell facilities have been received in Cleveland Heights and elsewhere – a modest number to date – we have identified the need to update the City's small cell application form to clarify fees, facility types and consolidated application issues. The proposed amendments to Chapter 943 are for the same purpose, in advance of what we anticipate will be a large number of applications to install small cell wireless facilities in the public right of way in the coming months and years.

Proposed: 06/01/2020

ORDINANCE NO. 54-2020 (MS)

By Council Member

An Ordinance amending Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures,” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights; and declaring an emergency.

WHEREAS, Substitute House Bill 478 (Sub. H.B. 478) took effect on August 1, 2018 and amended ORC Chapter 4939 with regard to the authority of municipalities to regulate the installation of small cell wireless facilities in the public right-of-way, including on utility poles and street lights, including municipally-owned facilities, and to construct, maintain, modify, operate, or replace wireless support structures in the right-of-way; and

WHEREAS, this Council on July 16, 2018 adopted Ordinance No. 82-2018 creating a new Chapter 943 of the Codified Ordinances of the City of Cleveland Heights to regulate the use and occupancy of the public rights of way within the City for small cell wireless facilities and support structures as well as enacting design guidelines applicable to small cell wireless facilities and support structures pursuant to Sub. H.B. 478; and

WHEREAS, on September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Order known as the “Small Cell Order,” that limited and revised state and local regulatory authority concerning certain small cell wireless installations within public rights-of-way nationwide; and

WHEREAS, this Council on May 6, 2019, adopted Ordinance No. 29-2019 amending Chapter 943, “Use of Public Ways for Small Cell Wireless Support Structures,” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights to lawfully exercise municipal authority on this subject in a manner that is consistent with Ohio Revised Code Chapter 4939 and the FCC’s Small Cell Order.; and

WHEREAS, this Council herein determines to further amend Chapter 943 to be consistent with the City’s Small Cell Facilities Use Permit Application, recently further updated in order to reflect the FCC Small Cell Order.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights shall be, and is hereby, enacted and adopted in its entirety to read as set forth in Exhibit A, attached hereto and fully incorporated herein. A complete copy of Exhibit A is also on file with the Clerk of Council.

ORDINANCE NO. 54-2020 (MS)

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to take immediate action to accommodate requests for Facilities permits filed pursuant to the FCC's Small Cell Order. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN, Mayor  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:

# Exhibit A

## CHAPTER 943 USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES

### 943.01 OVERVIEW AND PURPOSE; DEFINITIONS; EFFECTIVE DATE

- (a) The purpose of this Chapter is to:
- (1) Protect the health, safety, and welfare of the residents of the City;
  - (2) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City's Right-of-Way to protect the health, safety, and welfare of the citizens of the City;
  - (3) Preserve the existing or intended character of the City, including the City's residential neighborhoods, commercial districts, other business districts and historic districts;
  - (4) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures; and
  - (5) Comply with, and not conflict with or preempt, all applicable state and federal law; and
  - (6) Facilitate deployment of small cell Facilities and advanced wireless communications within the City in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.

(b) For the purpose of this Chapter, and the interpretation and enforcement hereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (1) "Applicant" means any person or entity who submits an Application pursuant to this Chapter.
- (2) "Application" means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.

ORDINANCE NO. 54-2020 (MS)

- (3) “Accessory Equipment” means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, vertical cable runs and other appurtenances.
- (4) “City” means the City of Cleveland Heights.
- (5) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
- (6) “Design Guidelines” means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established in Sections 943.21 et seq. herein.
- (7) “Eligible Facilities Request” means any request for modification of an existing support structure or base station that does not substantially change the physical dimension of such support structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:
  - (i) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than six (6) feet;
  - (ii) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than (4) cabinets, whichever is less;
  - (iii) The installation for any new ground-mounted equipment cabinets if there are not existing ground-mounted equipment cabinets;
  - (iv) Any excavation or deployment outside of the current site of the Facility;
  - (v) Removal of any concealment elements of the Facilities or the Wireless Support Structure; or
  - (vi) Any change that does not comply with this Chapter, including but not limited to the Design Guidelines set forth in Sections 943.21 et seq. herein, or state or federal law and regulations.

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

- (8) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (9) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
  - (i) Operators;
  - (ii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
  - (iii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.
- (10) “Historic District” means a building, property, or site, or group of buildings, properties, or sites that are either of the following:
  - (i) 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;
  - (ii) A registered historic district as defined in section 149.311 of the Revised Code.
- (11) “Operator” means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.
- (12) “Public Way” or “Right-of-Way” means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley,

public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

- (13) “Small Cell Facility” means a wireless facility:
- (i) That meets both of the following requirements:
    - (1) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and
    - (2) 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; and
  - (ii) That includes a “Small Wireless Facility,” which is a type of Small Cell Facility (i) in which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume, (ii) where such antenna is associated with a structure (a) 50 feet or less in height, including the antenna, or (b) that is not more than 10 percent taller than adjacent structures, or (c) is not extended by more than 10 percent or to a height exceeding 50 feet, whichever is greater, and (iii) that also otherwise satisfies the definition of “Small Wireless Facilities” found in the Federal Communication Commission’s September 26, 2018 Small Cell Order, FCC 18-133.
- (14) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
- (15) “Small Cell Use Permit” means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.
- (16) “Underground Area” means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other

facilities, other than structures and facilities owned by the City or a transit authority, are located underground.

- (17) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) feet or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, “Wireless Support Structure” excludes the following except in connection with a Small Wireless Facility, in which case the following are not excluded:
- (i) A utility pole or other facility owned or operated by a municipal electric utility; and
  - (ii) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

~~(c) The effective date of this Chapter shall be \_\_\_\_\_, 2019.~~

#### **943.02 CONSENT REQUIRED**

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the City Manager or designee in accordance with the requirements in this Chapter, including, but not limited to the Design Guidelines set forth in Sections 943.21 et seq. herein, Ohio R.C. Chapter 4939, and all applicable state and federal laws and regulations.

(b) Applicants are strongly encouraged to contact the City Manager or designee and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this Chapter, and the Design Guidelines set forth in Sections 943.21 et seq. herein. Further, no Small Cell Use Permit shall be construed as any warranty of title.

#### **943.03 PERMIT APPLICATION TYPES**

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

- (a) Type 1: Eligible Facilities Requests.
- (b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that ~~does is~~ not ~~constitute~~ an Eligible Facilities Request.

- (c) Type 3: New Wireless Support Structure. Such applications will address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.
- (d) For Type 2 and Type 3 Applications, Applicants shall indicate whether the Application ~~is or is not for~~ does or does not include or relate to a Small Wireless Facility.
  - (1) If an application involves a Small Wireless Facility, any related required permits will be issued within the designated review period set forth below, if complete applications for such permits are filed no later than the application for the Small Cell Facilities Use Permit.

#### **943.04 CONSOLIDATED CONSENT APPLICATIONS**

(a) Pursuant to Ohio R.C. Section 4939.0312, an Applicant may file one consolidated application for up to thirty (30) individual ~~small-cell~~ Small Cell Facilities or thirty (30) individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.

- (1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.
- (2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.
- (3) Applications for Small Cell Facilities ~~and cannot be combined with applications for~~ Wireless Support Structures cannot be commingled, unless the Small Cell Facility involved is a Small Wireless Facility as defined in Section 943(b)(13).
- (4) Applications for Small Wireless Facilities cannot be combined with applications for Small Cell Facilities and Equipment, or Wireless Support Structures, that do not involve Small Wireless Facilities.
- (5) If an application for a new Wireless Support Structure is related to an application for Small Wireless Facility antenna to be collocated thereupon, those applications may be filed on a consolidated basis but will be considered separate applications subject to separate application fees.

(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

(c) Although applications ~~for involving~~ Small Wireless Facilities may be filed on a consolidated basis, such applications ~~involving Small Wireless Facilities~~ may not be commingled

with applications for ~~other Small Cell Facilities or collocation, or new~~ Wireless Support Structures, that do not involve a Small Wireless Facility. The limit on the number of applications that may be filed in a consolidated application pursuant to Section 943.04(a) shall not apply to applications for Small Wireless Facilities.

(1) There is no limit on the number of Small Wireless Facilities applications that may be consolidated.

**943.05 APPLICATION FEE**

(a) The fee for each application is Two Hundred Fifty Dollars (\$250.00). The City shall adjust the fee by ten percent (10%) every five (5) years, rounded to the nearest Five (5) Dollars, beginning in the year 2023.

(b) An Application shall not be deemed complete until the fee is paid.

(c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application. This provision also applies when an application for a new Wireless Support Structure is related to an application for a Small Wireless Facility to be collocated thereupon; that is, this situation requires two applications, with each application subject to the fee provided in Section 943.05(a).

**943.06 ATTACHMENT FEE**

(a) In addition to the Application Fee, an annual fee of Two Hundred Dollars (\$200.00) shall be paid to the City for each Small Cell Facility attached to a municipally-owned Wireless Support. The City shall adjust the attachment fee by ten percent (10%) every five years, rounded to the nearest five (5) dollars, beginning in the year 2023.

(b) The first-year attachment fee shall be paid when the collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the collocation is complete.

**943.07 REQUIRED APPLICATION MATERIALS**

The Applicant must submit the following documentation with each Application.

(a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.

(b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.

(c) Fully dimensional scaled site plan (scale no smaller than one inch equals forty (40) feet). The site plan must include:

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- (1) The exact proposed location of the Facilities within the Right-of-Way by GPS coordinates and/or in degrees, minutes and seconds (“DMS”);
- (2) All existing Facilities with all existing transmission equipment;
- (3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within one hundred (100) feet surrounding the proposed Facilities;
- (4) The legal property boundaries within one hundred (100) feet surrounding the proposed Facilities;
- (5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within one hundred (100) feet surrounding the proposed Facilities; and
- (6) Access and utility easements within one hundred (100) feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one inch equals ten (10) feet) of the proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within three hundred (300) feet of the proposed Facilities prior to submitting the Application. The notice shall include:

- (1) Name of the Applicant;
- (2) Estimated date Applicant intends to submit the Application;
- (3) Detailed description of the proposed Facilities and the proposed location; and
- (4) Accurate, to-scale color photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals forty (40) feet and shall depict surrounding area within one hundred (100) feet of the proposed Facilities.

(h) A preliminary installation/construction schedule and completion date.

(i) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed small cell equipment.

(j) Analysis demonstrating that the proposed Facilities do not interfere with the City’s public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to

making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.

- (k) A landscape plan that demonstrates screening of proposed small cell equipment.
- (l) Detailed and/or shop drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:
  - (1) The manufacturer's name and model number;
  - (2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and
  - (3) The noise level generated by the equipment, if any.
- (m) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.

**943.08 APPLICATION REVIEW**

- (a) Applications shall be evaluated in the timeframes as follows:
  - (1) Type 1 Applications 60 days
  - (2) Type 2 Applications 90 days, except that for Small Wireless Facilities, that are not to be collocated upon a new Wireless Support Structure, the timeframe for a Type 2 Application shall be 60 days.
  - (3) Type 3 Applications 120 days, except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be 90 days.
- (b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant shall be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete, as described below:
  - (1) To toll the time period for incompleteness, the City must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application; except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.
    - (A) In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to subsection (b)(1), the time

period set forth in subsection (a) shall be deemed never to have started running at all until the Applicant provides a supplemental submission.

- (2) The time period set forth in subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the City's notice of incompleteness pursuant to subsection (b)(1), but may be tolled again if the City notifies the Applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the City of the deficiencies in a supplemental submission tolls the time period set forth in subsection (a) until the Applicant supplies the specified information

(c) The timeframes set out in subsection (a) may be tolled by mutual agreement between the Applicant and the City. The timeframes in subsections (a)(2) and (a)(3) may also be tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of subsections (c)(1) and (c)(2) below do not apply:

- (1) If the City receives between twenty-five (25) and forty (40) applications in a thirty (30) day period, then the City may toll for an additional twenty-one (21) days beginning with the twenty-sixth (26th) application.
- (2) If the City receives more than forty (40) applications in a thirty (30) day period, then the City may toll for an additional fifteen (15) days for every additional fifteen (15) applications received, up to a maximum tolling period of ninety (90) days, as indicated below:
  - (A) Applications 41-55: 36 additional days
  - (B) Applications 56-70: 51 additional days
  - (C) Applications 71-85: 66 additional days
  - (D) Applications 86-100: 81 additional days
  - (E) Applications 101+: 90 additional days.
- (3) When an Applicant submits an underground area waiver pursuant to Section 943.32(d) herein, in which case the City may toll for an additional fourteen (14) days.

(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 943.16 here, then the City Manager or designee may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for Small Cell Use Permit is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:

- (1) Failure to provide information required under Section 943.07;
- (2) Failure to comply with Design Guidelines set forth in set forth in Sections 943.21 et seq. herein;
- (3) Failure to provide financial surety pursuant to Section 943.15;
- (4) Failure to remove abandoned Facilities as required under Section 943.12;
- (5) Conflict with the historic nature or character of the surrounding area;
- (6) Conflict with planned future improvements in the Right-of-Way; and
- (7) Failure to comply with generally applicable health, safety, and welfare requirements.

**943.09 PERMITTING PROCESS, DURATION, AND TERMINATION**

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of ten (10) years. Permits may be renewed for five year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of ten (10) years or the duration of the Facilities Operator's agreement with a wireless service provider provided pursuant to Section 943.07(k), whichever is shorter.

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with each and every applicable law and regulation.

(e) Pursuant to Ohio R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within one hundred eighty (180) days of issuance of the permit, unless the delay is caused by:

- (1) Make-ready work for a municipally-owned Wireless Support Structure; or
- (2) Due to the lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within sixty (60) days after the Small Cell Use Permit was granted.

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

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within one hundred eighty (180) days of issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 943.06, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual attachment fee was due.

(h) If the Facilities Operator fails to remit the annual registration required pursuant to Section 943.10, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual registration was due.

(i) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60-days written notice to the City.

(j) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.

(k) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit.

**943.10 ANNUAL REGISTRATION**

Facilities Operators shall comply with the annual registration requirements set forth in Section 941.03 of Chapter 941, "Use of Public Ways by Service Providers."

**943.11 NONCONFORMING FACILITIES**

(a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this Chapter but that do not comply with the requirements of this Chapter may remain in the Right-of-Way but shall be considered a Nonconforming Facility.

(b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant to Section 941.03 by no later than November 1, 2018.

(c) If a Nonconforming Facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this Chapter, the Design Guidelines established in Sections 943.21 et seq. herein, and state and federal law and regulations.

**943.12 ABANDONED AND DAMAGED FACILITIES**

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(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within three hundred sixty five (365) days from the date the use was discontinued, the City may remove the Facilities at the expense of the Facilities Operator after providing thirty (30) days written notice to the Facilities Operator of its intent to do so.

(b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than thirty (30) days after obtaining written notice that the Facilities were damaged. If the damaged Facilities are not repaired within thirty (30) days, then the City may repair or remove the damaged Facilities at the expense of the Facilities Operator after providing thirty (30) days written notice to the Facilities Operator of its intent to do so.

**943.13 INSURANCE REQUIREMENTS**

Facilities Operators shall comply with the insurance requirements set forth in Subsection 941.02(e).

**943.14 INDEMNIFICATION**

A Facilities Operator 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, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failure to act or misconduct 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.

**943.15 FINANCIAL SURETY**

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and Ohio R.C. Chapter 4939. The financial surety shall be in compliance with Subsection 941.02(g) or as otherwise determined reasonable by the City Manager or designee, such as being an amount sufficient to cover the cost of removal of all Facilities owned or operated by Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned, unused, or unsafe Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within ten (10) business days after City notifies the Facilities Operator that it has drawn on the financial surety.

**943.16 RESERVED SPACE**

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

**943.17 REMOVAL OR RELOCATION OF FACILITIES**

(a) Consistent with R.C. 4939.08, the City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving notice that the Facilities are located improperly.

**943.18 NOTICE OF WORK**

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

**943.19 CONSTRUCTION PERMIT**

Facilities Operators are required to obtain a construction permit pursuant to Section 941.07 including, but not limited, to the construction bond set forth in Subsection 941.07(g), prior to commencing any of the following activities:

- (1) Collocation of small cell equipment on a Wireless Support Structure;
- (2) Replacement, modification, repair, or maintenance of small cell equipment;
- (3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
- (4) Any excavation of the Right-of-Way in connection with the activities described in this Section.

**943.20 EXCAVATION PERMIT.**

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Section 941.07 including, but not limited, to the construction bond set forth in Subsection 941.07(g).

**943.21 GENERAL DESIGN STANDARDS**

(a) Facilities shall not be installed unless the Facilities are compliant with the Design Guidelines, set forth in Sections 943.21 et seq. herein, and any Application requirements, and all applicable local, state, and federal laws. Applicant shall have the burden to demonstrate by substantial and competent evidence that all Design Guidelines have been met.

(b) A Facilities Operator shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in an Application for a Small Cell Use Permit.

(c) A Facilities Operator shall not construct, modify, or replace any Facilities without a construction permit pursuant to Section 941.07.

(d) All work shall be performed in a professional manner consistent with the highest standards of workmanship.

(e) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

(f) Facilities shall not be installed in any location that causes any interference with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications systems or system components.

(g) The City may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible or would materially inhibit the provision of wireless services by the Facilities Operator within the City.

(h) Facilities shall not interfere with existing or planned City-owned trees.

(i) Signage shall be mounted on all new Facilities providing the Facilities Operator's name, an emergency contact phone number, an informational contact number, and all other information required by law. Unless otherwise prohibited by law, signage shall be discreet in color and shall match the Facilities and surrounding area and font size used on the sign shall be no smaller than 9 point font and no larger than 14 point font.

(j) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from Facilities.

(k) A landscape plan, approved by the Director of Planning, shall be required for each Application. Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.

(l) The City may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but

shall not be limited to, fencing, public art, strategic placement, and placement within existing or replacement street furniture.

(m) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.

(n) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the City, and the color shall match the Facilities. The City may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the City determines a non-matching color would better fulfill the purposes of these Design Guidelines or match the surrounding area.

(o) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facility Operator's sole expense as soon as practicable, but no later than thirty (30) days from the date the Facilities Operator receives notice of the graffiti. The City shall remove graffiti at the expense of the Facilities Operator after the thirty (30) days expires.

#### **943.22 DESIGN SPECIFICATIONS FOR COLLOCATION**

(a) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.

(b) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least eight (8) feet above ground level. If Small Cell Equipment is projecting toward the street then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level.

#### **943.23 DESIGN SPECIFICATIONS FOR ANTENNAS**

(a) Antennas ~~and Accessory Equipment~~ must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.

(b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet; provided, however, that the permissible increase in height resulting from collocation or installation of a Small Wireless Facility on a Wireless Support Structure shall be as provided in Section 943.01(b)(13).

(c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister or other shroud. All Accessory Equipment associated with the antenna shall be concealed and shall not visibly protrude from the shroud or canister.

(d) The width of the canister or other shroud encasing the antenna and Accessory Equipment shall not exceed the width of the narrowest portion of the Wireless Support Structure.

(e) The enclosure or shroud shall be painted to match or complement the Wireless Support Structure.

(f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.

(g) Antennas shall not impair light or substantially obstruct views from nearby window(s).

(h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The City may approve a side-mounted antenna if, in the City's discretion, the side-mounted antenna would be more appropriate given the built environment, neighborhood character, overall site appearance or would otherwise promote the purposes in these Design Guidelines.

**943.24 DESIGN SPECIFICATIONS FOR WIRELESS SUPPORT STRUCTURE-MOUNTED EQUIPMENT**

(a) All Wireless Support Structure-mounted Small Cell Equipment other than the antenna(s) and electric meter must be concealed within an equipment cabinet.

(b) Equipment cabinets shall be mounted flush to the Wireless Support Structure.

(c) Equipment cabinets shall be stacked together on the same side of the Wireless Support Structure and oriented away from any windows and doorways to minimize visual impacts thereupon. The cabinet width shall not exceed the Wireless Support Structure's width unless technologically infeasible.

(d) The equipment cabinets must be non-reflective and painted, wrapped or otherwise colored to match the Wireless Support Structure.

**943.25 DESIGN SPECIFICATIONS FOR GROUND-MOUNTED SMALL CELL EQUIPMENT**

(a) The City shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant (1) proposes the ground-mounted equipment in connection with a Collocation, and (2) shows that the equipment cannot be feasibly placed on the Wireless Support Structure or in an underground vault.

(b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not technically feasible, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.

(c) All ground-mounted Small Cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.

(d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in any way. The Small Cell Equipment's height, width, length and placement should be as inconspicuous and as visually compatible with its context as practicable.

**943.26 DESIGN SPECIFICATIONS FOR CABLES**

(a) All cables, conduit and wiring shall be located inside conduit and inside the Wireless Support Structure or an equipment cabinet.

(b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible.

**943.27 DESIGN SPECIFICATIONS FOR ELECTRICAL METERS**

(a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.

(b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

**943.28 DESIGN SPECIFICATIONS FOR UTILITY LINES**

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

**943.29 DESIGN SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES**

(a) Unless otherwise determined by City Manager or designee, a Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:

- (1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or
- (2) An existing Wireless Support Structure is located within one hundred (100) feet of the proposed site of a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

(b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the City.

- (1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the City.

- (2) The City may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.

(c) Except in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 943.01(b)(13). The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure. Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the City.

(e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the City.

- (1) If partially removed, the original Wireless Support Structure foundation shall be removed to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half ( $\frac{1}{2}$ ) inch to three-quarter ( $\frac{3}{4}$ ) inch rocks. The remaining eight (8) inches shall be topsoil.
- (2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The Director of Planning shall determine the appropriate type of backfill material and compaction required in landscaped areas.

**943.30 DESIGN SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES**

(a) New Wireless Support Structures shall be designed and constructed to accommodate at least two sets of Small Cell Equipment on the same Wireless Support Structure.

(b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles unless otherwise determined by the City Manager or designee.

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(c) Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) In residential zoning districts, new Wireless Support Structures shall be located at the shared property line between two residential parcels near where the parcels intersect the Right-of-Way when available.

(e) In commercial zoning districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines near where the parcels intersect the Right-of-Way.

(f) In park zoning districts, new Wireless Support Structures shall be located in the least visible location practicable, as determined by the City Manager or designee.

(g) New Wireless Support Structures shall not interfere with any metered parking space.

(h) A new Wireless Support Structure shall not be located in front of a building entrance or exit.

(i) Except in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 943.01(b)(13). The overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed new Wireless Support Structure.

(j) The City may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure. Unless otherwise specified by the City, new wood Wireless Support Structures are prohibited in the following zoning districts:

(1) All residential zoning districts; and

(2) All commercial zoning districts.

(k) Facilities Operators shall be discouraged from installing a new Wireless Support Structure within one hundred (100) feet of a building designated to be of historic importance under local, state or federal laws.

**943.31 HISTORIC DISTRICT DESIGN GUIDELINE REGULATIONS**

Except antennas, all Small Cell Equipment to be located in the Right-of-Way in a Historic District including, but not limited to, Ambler Heights Historic District, Euclid Golf

Historic District, Euclid Heights Historic District, Fairhill Road Village Historic District, Fairmount Boulevard Historic District, Forest Hill Historic District, Herrick Mews (Overlook Road Carriage House) Historic District, Inglewood Historic District, Mayfield Heights Historic District, Shaker Farm Historic District, and Shaker Village Historic District, Nela Park Historic District, shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the City may specify, as long as such measures do not have the effect of prohibiting or materially inhibiting the Facilities Operator's provision of service. Such measures are not considered part of the small cell facility for purposes of facility size restrictions in this Chapter. A waiver submitted pursuant to Section 943.32(d) will be considered if such measures are shown to be technologically infeasible.

**943.32 UNDERGROUND AREA DESIGN GUIDELINE REGULATIONS**

(a) Subject to subsection (b), a Facilities Operator shall locate its Facilities underground in an Underground Area.

(b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an Existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.

(c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.

(d) An Operator may apply to the City Manager or designee for a waiver of the underground placement requirement if the Operator is unable to achieve its service objective under the following circumstances:

- (1) From a location in the public Right-of-Way where the prohibition does not apply;
- (2) From a utility easement the service provider has the right to access; and
- (3) From other suitable locations or structures made available by the City at reasonable rates, fees, and terms.

(e) Submission of a waiver pursuant to Subsection (d) herein is subject to the Facilities Operator's agreement to toll the timeframes set forth in Subsection 943.08(a) of the Codified Ordinances by fourteen (14) days.

**943.33 DISCRETIONARY WAIVER**

It is within the City Manager's reasonable discretion to waive a portion or portions of this Chapter, as permitted or warranted under state and federal law, where such requirements, in the City Manager's judgment, are not necessary and/or appropriate to protect the City's interests and/or not consistent with the purposes and intent of this Chapter.

**943.99 PENALTIES; EQUITABLE REMEDIES.**

(a) Criminal Penalties. Any Applicant of Operator or other Person acting as the agent of an Applicant or Operator who is found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

- (1) In lieu of the criminal penalties set forth above, the City Manager may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.
- (2) The Civil Forfeiture shall be in an amount payable to the City of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.
- (3) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.
- (4) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City if additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.
- (5) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged violation no sooner than thirty (30) days and no later than sixty (60) days from receipt of the notice of dispute.
- (6) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

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(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

Proposed: 06/01/2020

RESOLUTION NO. 55-2020 (PSH)

By Council Member

A Resolution ratifying the City's membership and participation in the Eastside Departments Group Enforcement ("EDGE") Agency; and declaring an emergency.

WHEREAS, Ohio Revised Code Section 737.04 authorizes municipal corporations to enter into agreements with other municipal corporations for the services of police personnel, the use of police equipment, and the interchange of such service personnel and equipment within the territories; and

WHEREAS, the Cities of Beachwood, Euclid, Shaker Heights, South Euclid, and University Heights entered into an agreement establishing the Eastside Departments Group Enforcement ("EDGE") Agency in order to foster efficient and cohesive law enforcement and investigative operations amongst the participating cities and reduce conflicts between them; and

WHEREAS, in 2017, upon recommendation of the Chief of Police, the City of Cleveland Heights joined EDGE as a participating member; and

WHEREAS, the Board of EDGE has requested that this Council ratify that City's membership and participation in EDGE; and

WHEREAS, this Council hereby determines that it is in the City's best interest to continue its membership and participation in EDGE.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council hereby ratifies the City's membership and participation in the Eastside Departments Group Enforcement ("EDGE") Agency. This Council hereby finds that it is in the best interests of the City and its residents to continue its membership and participation in EDGE.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timely need to ratify the City's membership and participation in EDGE to continue the same uninterrupted to further protect the safety and welfare of all residents within the City. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

RESOLUTION NO. 55-2020 (PSH)

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JASON S. STEIN, Mayor  
President of Council

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AMY HIMMELEIN  
Clerk of Council

PASSED:



CITY OF CLEVELAND HEIGHTS  
ACTIONS OF THE BOARD OF ZONING APPEALS  
ON WEDNESDAY, May 20, 2020

CAL. NO. 3495      Glinda Thomas, 2736 Berkshire Rd., AA Single-Family, requests variance to Code Section 1121.12(i)(1) to permit a fence in corner side yard along Mornington Lane to be taller than max. 4'.

Action: Granted 5-0 with the following conditions:

1. Variance 3495 is granted to permit a 6' tall fence in the corner side yard as shown on the site plan submitted with the variance application.

CAL. NO. 3496      Benjamin & Kylie Volpe, 2638 Fairmount Blvd., AA Single-Family, requests variance to Code Section 1121.08(b)(2) to permit an addition to the attached garage in the corner side yard (not permitted).

Action: Granted 5-0 with the following conditions:

1. Variance 3496 is granted to permit a portion of the addition to the attached garage to be located in the corner side yard as shown on the drawings submitted with the BZA application.
2. Approval of the Architectural Board of Review;
3. Receipt of a building permit; and
4. Complete construction within 18 months of the effective date of this variance.

CAL. NO. 3498      Jim Posch & Joyce Braverman, 2205 Demington Dr., A Single-Family requests variance to Code Section 1121.12(a)(5) to permit ornamental pool to be less than min. 3' from side lot line.

Action: Granted 5-0 with the following conditions:

1. Variance 3498 is granted to permit the ornamental pool to have a setback of less than 3' from the side property line as shown in the site plan submitted with the BZA application;
2. Receipt of required building permit(s); and
3. Complete construction within 24 months of the effective date of this variance.