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ACT SUMMARY

Small cell facilities in the municipal public way

- Replaces micro wireless facilities with "small cell facilities" regarding the municipal public way usage law and makes various other changes to that law.
- Establishes procedures for:
 - Consent for small cell facility operator placement of small cell facilities and wireless support structures in the municipal public way;
 - Consent for nonoperator (person who is not an operator) placement of these facilities and structures in the municipal public way; and
 - Operator placement of small cell facilities on municipally owned or operated wireless support structures in the municipal public way.

Municipal public way usage state policy changes

- Changes municipal public way usage state policy to do the following:
 - Promote rapid deployment of small cell facility infrastructure and related capital investment in Ohio by ensuring that municipal corporations grant or deny

* This version updates the effective date and corrects footnote errors.

consent to install, operate, modify, or replace wireless facilities in a timely manner;

- Protect the integrity of residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.
- Repeals the municipal public way usage policy that sought to expedite the installation and operation of facilities to deploy advanced wireless service throughout Ohio.

Consent for placement

- Requires all applications for requests for consent to place small cell facilities or wireless support structures to include the name of the person who owns, or will own, the facility or structure.
- Requires a permit or other record of consent issued by a municipal corporation to include the name of the person who owns, or will own, the small cell facility or wireless support structure.

Consent process for operators

- Prohibits a municipal corporation, regarding an operator request for consent, from requiring any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell facility in the municipal public way, other than when a work permit is required.
- Specifies that, for operator requests for consent, an "operator" includes any person that, at the time of filing the request, provides to the municipal corporation the person's written authorization to perform the specific work for which consent has been requested on behalf of an operator.

Time period for approval

- Requires a municipal corporation to grant or deny the following operator requests for consent to do the following in a municipal public way not later than:
 - 90 days, to collocate small cell facilities on a wireless support structure;
 - 90 days, to replace or modify a small cell facility on a wireless support structure;
or
 - 120 days, to construct, modify, or replace a wireless support structure associated with a small cell facility.



- Provides that failure to grant or deny a small cell facility or work permit request within the time periods (if the time period is not tolled) results in the request being deemed granted when the operator provides notice to the municipal corporation that the time period has lapsed.

Tolling of municipal corporation consent time period

- Alters the consent-tolling time periods regarding a large number of operator requests made in a 30-day period by allowing the municipal corporation to toll the period according to standards using a 21-day tolling period applied according to the municipal corporation's population and the number of requests.
- Provides for an extension of the 21-day tolling period by additional 15-day periods depending on the number of operator consent requests.
- Imposes a maximum 90-day tolling limit regarding any operator consent request.
- Requires a municipal corporation, on request, to provide an operator written notice of the time limit for a specific consent request.

Consolidated applications

- Establishes a cap of 30 small cell facilities or 30 wireless support structure operator consent requests for a single consolidated application.
- Limits a consolidated application to substantially the same type of small cell facilities or wireless support structures.
- Permits a municipal corporation to separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.
- Permits a municipal corporation to reduce the fee for consolidated applications, to encourage their submission.
- Provides that each small cell facility or wireless support structure constitutes a separate request for consent, for the purpose of the tolling schedule.

Collocation on municipally owned/operated wireless support structures

- Requires a municipal corporation to permit collocation of a small cell facility by an operator on a wireless support structure owned by a municipal corporation and located in the municipal public way if, among other requirements, the collocation is for providing wireless service and meets adopted design guidelines.



Consent for nonoperators

- Requires a person who is a nonoperator to request consent for placement of small cell facilities and wireless support structures in the municipal public way under continuing municipal public way usage law.

Limitations imposed on municipal corporation authority

- Applies certain limitations and prohibitions imposed on municipal corporations under prior law for micro wireless facilities to operator and nonoperator placements of small cell facilities and wireless support structures.
- Repeals other limitations and prohibitions imposed on municipal corporations under prior law for micro wireless facilities, thus making them inapplicable regarding small cell facilities and wireless support structures.

Authority granted to municipal corporations

- Permits municipal corporations to do the following regarding placement of small cell facilities and wireless support structures in the municipal public way:
 - Reserve municipal public way space or space on a municipally owned wireless support structure or pole for future public safety or transportation uses, in accordance with an approved plan, if it does not preclude placement of a pole or collocation of a small cell facility.
 - Require reasonable and nondiscriminatory spacing requirements for new wireless support structures, if the requirements do not prohibit or have the effect of prohibiting the provision of wireless service to any location.
 - Adopt reasonable design guidelines with objective, technologically feasible criteria reasonably matching the aesthetics and character of the immediate area and apply them in a nondiscriminatory manner.
 - Propose alternate locations for proposed wireless support structures consistent with certain distance requirements (appears to apply only to operators).
 - Require collocation or a new wireless support structure to be completed within 180 days after issuance of a permit, with certain exceptions and extensions permitted under the act (appears to apply only to operators).
 - Set certain restrictions for the height of a wireless support structure and the placement of a wireless facility.
 - Require an operator to comply with reasonable and nondiscriminatory requirements prohibiting structures and facilities due to an area requiring



undergrounding or requiring them to be placed elsewhere (appears to apply only to operators).

- Require reasonable, technically feasible, and nondiscriminatory design or concealment methods in historic districts (certain provisions apply only to operators).
- Resolve conflicting requests for installation due to spacing, setback, or fall zone requirements through a reasonable and nondiscriminatory manner deemed appropriate by the municipal corporation.
- Impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to municipal property caused by an operator or its agent (appears to apply only to operators).

Fees

- Limits the fee imposed for granting or processing an operator application for consent for placement in a municipal public way to a one-time fee not to exceed \$250 per small cell facility.
- Limits the amount a municipal corporation may charge annually for operator attachment to a municipally owned wireless support structure to an amount not to exceed \$200 per small cell facility.
- Beginning on the act's effective date, permits the municipal corporation to adjust the above amounts by 10% every five years, rounded to the nearest \$5, and allows adjustments during each five-year period to be applied incrementally or as a single adjustment.
- Prohibits a municipal corporation from charging operators any fees other than those described above and, as described in the act, work permit fees and financial sureties.
- Provides that the placement or attachment of small cell facilities and any associated fees, do not subject a municipal corporation to state or local tax liabilities or assessments.
- Permits an operator to stop paying annual charges or fees if the operator removes its small cell facility from a municipally owned wireless support structure.

Other municipal public way changes

- Provides that a municipal corporation's approval term for an operator's attachment to a wireless support structure is at least ten years, with a presumption of renewal



for successive five-year terms, except as terminated under conditions and requirements described in the act.

- Permits an operator to remove its small cell facilities at any time.
- Requires an operator who owns or operates small cell facilities or wireless support structures in the municipal public way to indemnify and hold the municipal corporation and its representatives harmless to the extent that the harm is caused by the operator's or agent's negligence.
- Provides that consent of a municipal corporation is not required for the replacement of wireless facilities with wireless facilities that are consistent with the municipal corporation's current design guidelines and that are substantially similar to, and of the same size or smaller than, the existing facilities.
- Provides that, for certain investor-owned electric utilities and their affiliates, electric cooperatives, and independent transmission companies, the municipal public way usage laws that apply primarily to operators do not affect construction standards or engineering practices, tariffs, contracts, or laws or regulations regarding their utility poles or other equipment.
- Permits a person to construct, modify, or maintain a utility pole or wireless support structure along, across, and under a municipal public way in excess of the size limits, to the extent permitted by the municipal corporation's regulations.
- Requires an operator, on request of a municipal corporation, and in order to accomplish construction or maintenance directly related to health, safety, and public welfare improvements, to relocate or adjust its facilities in the municipal public way at no cost to the municipal corporation if the request is not discriminatory.
- Provides that a cable or video service provider is not required to obtain permits from a municipal corporation or pay fees, except for work permits and associated fees, to place, operate, maintain, or replace micro wireless facilities under an existing franchise or video service authorization.
- Provides that a holder of an existing franchise or video service authorization is not required to obtain additional authorizations or pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization.
- Provides that the permitting procedures and authorizations set forth in the act apply only to the placement of small cell facilities and wireless support structures in the municipal public way, and do not authorize the construction and operation of a wireline backhaul facility.



- In conjunction with the act's change of focus to small cell facilities, creates and amends numerous definitions governing municipal public way usage law and repeals several definitions.

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CONTENT AND OPERATION

Overview: *small cell facility* replaces *micro wireless facility*

The act makes numerous changes to the municipal public way usage law in R.C. Chapter 4939, regarding the regulation and placement of "small cell facilities"



instead of "micro wireless facilities," the term used under prior law.¹ It establishes separate procedures for consent for the placement of small cell facilities in the municipal public way by a small cell facility "operator" and by a person who is not an operator "nonoperator." The act also provides for operator placement of such facilities on municipally owned or operated wireless support structures in the public way.

Continuing law prohibits a "person" (any natural person, corporation, or partnership, and any governmental entity²) from occupying or using a public way without first obtaining any consent required by the municipal corporation that owns or controls the public way.³ A "public way" means any municipally owned or controlled public street, road, highway, freeway, lane, path, alley, court, sidewalk, boulevard, parkway, drive, (and easement, as added by the act) and other land dedicated or designated for a compatible public use. It includes their surface, and the space within, through, on, across, above, or below them.⁴ To "occupy or use" the public way is to place a tangible thing in a public way for any purpose such as constructing, repairing, or operating lines, poles, pipes, conduits, ducts, equipment or other structures, appurtenances, or facilities necessary for the delivery of public utility services or cable operator services.⁵

State policy changes

The act adds the following to the list of state public policies regarding the access or use of a municipal public way:

- Promote the rapid deployment of small cell facility infrastructure and related capital investment in Ohio by ensuring that municipal corporations grant or deny consent to install, operate, modify, or replace wireless facilities in a timely manner;⁶ and

¹ The act amends, renumbers, repeals, and repeals and re-enacts several portions of R.C. Chapter 4939. For example, the act repeals R.C. 4939.032, 4939.033, and 4939.037, re-enacts these sections into R.C. 4939.031, but applies them to small cell facilities only. In addition, the act enacts new versions of R.C. 4939.032 and 4939.033.

² R.C. 4939.01(L).

³ R.C. 4939.03(C)(1).

⁴ R.C. 4939.01(N).

⁵ R.C. 4939.01(J).

⁶ R.C. 4939.02(A)(3).



- Protect the integrity of residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.⁷

The state's policy to expedite the installation and operation of micro, and smaller, wireless facilities to facilitate the deployment of advanced wireless service throughout Ohio is repealed.⁸

Consent for placement in the municipal public way

The act amends municipal public way usage law to provide procedures for consent for small cell facility "operator" (see "**Definition changes**") and nonoperator (every person who is not an operator) placement of small cell facilities in the municipal public way and for operator placement of such facilities on municipally owned or operated wireless support structures in the public way.

The act specifies that an application for a request for consent to place a small cell facility or wireless support structure in the municipal public way must include the name of the person who owns, or will own, the facility or structure for which consent is requested. A permit or other record issued by a municipal corporation that authorizes the use of the public way must include the name of the person who owns, or will own, the facility or structure.⁹

Consent process for operators

Exemption from zoning approval

The act provides that small cell facility "collocation" and "wireless support structure" (see "**Definition changes**") construction, maintenance, modification, operation, or replacement in, along, across, upon, and under the public way by an operator is a permitted use not subject to zoning review or approval. Additionally, an operator must comply with generally applicable standards that are consistent with the municipal public way usage law and adopted by a municipal corporation for construction and public safety in a public way. All structures and facilities to be constructed and maintained may not impede or impair public safety or the legal use of the public way by the municipal corporation, the traveling public, or other public utilities.¹⁰

⁷ R.C. 4939.02(A)(9).

⁸ R.C. 4939.02(A)(8), as codified under former law.

⁹ R.C. 4939.032.

¹⁰ R.C. 4939.031(A).



The act also prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell facility in the municipal public way, except to allow a municipal corporation to require a "work permit" (see "**Definition changes**"). The act also continues the law that excepts from this prohibition the requirements for any franchise, pole attachment, or other agreements between a municipal corporation and a cable operator or a public utility.¹¹

Time period for approval

A municipal corporation must grant or deny a request regarding placement by an operator in the municipal public way according to requirements established by the act. Consent must be granted or denied within the following time periods:

Consent time period	Type of placement in public way
90 days	Collocation of small cell facilities on a wireless support structure ¹²
90 days	Replacement or modification of a small cell facility on a wireless support structure, "if consent is required under this section" ¹³
120 days	Construction, modification, or replacement of a wireless support structure associated with a small cell facility ¹⁴

Additionally, the act requires an entity filing a completed request for consent to make the filing under the decision granting or denying the request for collocation, construction, modification, or replacement of small cell facilities or wireless support structures.¹⁵ It is unclear how a person can file a request for consent "under" the decision regarding the denial or grant of that consent.

Failure to approve within the time period

If a municipal corporation fails to timely grant or deny a small cell facility or work permit request within the time periods described above (if the time period is not tolled), the request is deemed granted when the requesting entity provides notice to the municipal corporation that the time period has expired.¹⁶

¹¹ R.C. 4939.031(D) and 4939.0311(B).

¹² R.C. 4939.031(B)(1).

¹³ R.C. 4939.031(B)(2). The effect of the phrase "if consent is required under this section" is unclear.

¹⁴ R.C. 4939.031(B)(3).

¹⁵ R.C. 4939.031(B).

¹⁶ R.C. 4939.031(C).



Tolling of municipal corporation consent time period

Under the act, a municipal corporation may toll the time period for consent if the number of operator requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time periods described above due to a municipal corporation's lack of resources. The time periods may be tolled based on the number of application requests received in any consecutive 30-day time period according to "thresholds" (which may refer to population or applications) described in the following table:¹⁷

Population threshold	Application threshold	Applications for 1st tolling period (21 days)	Applications for 2nd tolling period (15 days)	Applications for 3rd tolling period (15 days)
30,000 or less	15	16-30	31-45	46-60
30,001-40,000	20	21-35	36-50	51-65
40,001-50,000	25	26-40	41-55	56-70
50,001-60,000	30	31-45	46-60	61-75
60,001-100,000	60	61-75	76-90	91-105
100,001 or more	90	91-120	121-150	151-180

To illustrate the tolling periods, the table lists only two additional tolling periods, but more may be possible. The number of additional tolling periods under the act is limited only by the number of requests received with any consecutive 30-day time period. The act is vague in its description of how additional tolling periods after the initial 21-day period are calculated. It also does not specify whether additional tolling periods could be added to preceding tolling periods. However, the act clearly states that a municipal corporation may not toll the time period for any small cell facility or wireless support structure for more than 90 days.¹⁸ But, depending upon how tolling periods are calculated, the 90-day limit may not be needed if the tolling period is limited to a number of days that is less than 90.

Notice of time limit

The act requires a municipal corporation, on request, to provide an operator written notice of the time limit for a specific small cell facility or wireless support structure request.¹⁹

¹⁷ R.C. 4939.036(A)(3)(a) and (b).

¹⁸ R.C. 4939.036(A)(3)(c).

¹⁹ R.C. 4939.036(A)(3)(c).



Consolidated application for consent

The act grants a municipal corporation the authority to permit an operator²⁰ seeking to construct, modify, collocate, or replace more than one small cell facility or wireless support structure to file (as the operator determines) up to 30 small cell facilities requests or up to 30 wireless support structure requests in one consolidated application. The single application may only address multiple small cell facilities or multiple wireless support structures if they each involve substantially the same type of small cell facilities or substantially the same type of wireless support structures. A municipal corporation, however, may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.²¹

Consolidated applications and tolling

The act provides how to count consolidated applications for tolling calculations. Each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced constitutes a separate request for consent, for the purposes of calculating the tolling response deadline described above. However, a request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.²²

Consolidated applications and fee reductions

To encourage their submission, the act explicitly permits a municipal corporation to reduce the fee for consolidated applications.²³

Collocation on municipally owned/operated wireless support structures

Conditions for collocation, generally

The act requires a municipal corporation to permit collocation of a small cell facility by an operator to a wireless support structure owned by a municipal corporation and located in the public way, if the collocation is:

- Consistent with the municipal public way usage law (which means, presumably, consistency with the provisions of the act and those discussed above under "**Consent for placement in the municipal public way**," including, for example the approval timelines);

²⁰ The act uses "person," but only an "operator" can use the process under R.C. 4939.031, so the analysis refers to the operator here. See R.C. 4939.033.

²¹ R.C. 4939.0312(A).

²² R.C. 4939.0312(C).

²³ R.C. 4939.0312(B).



- For the purpose of providing wireless service;
- In compliance with reasonable, written design guidelines adopted by the municipal corporation; and
- In compliance with reasonable terms and conditions adopted by the municipal corporation that are consistent with the design guidelines.²⁴

Collocation after replacement/modification

The municipal corporation may require replacement or modification of its wireless support structure, at the operator's cost, as a condition for collocation on that structure, if the municipal corporation determines it is necessary for compliance with the municipal corporation's construction or safety standards. The replacement or modification must conform to the applicable design guidelines and the municipal corporation's specifications for the structure type being replaced. The act permits the municipal corporation to retain ownership of the wireless support structure after its replacement.²⁵

Consent process for nonoperators

If a person is a nonoperator, the person must make requests to collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under a public way in accordance with (1) the requirements of the act that are not specifically available only to operators regarding small cell facilities and wireless support structures and (2) the requirements under the continuing municipal public way usage law.²⁶ Under that law, no person may occupy or use a public way without first obtaining any requisite municipal corporation consent, which must be granted or denied within 60 days after the request is filed.²⁷

Limitations imposed on municipal corporation authority

Micro wireless limitations applied to small cell/wireless support structures

With regard to small cell facilities or associated wireless support structures in a municipal public way, the act prohibits a municipal corporation from doing the following (prior law applied these limitations only to micro wireless facilities):²⁸

²⁴ R.C. 4939.0322(A).

²⁵ R.C. 4939.0322(A).

²⁶ R.C. 4939.033.

²⁷ R.C. 4939.03(C).

²⁸ R.C. 4939.0313.



- Requiring a person to submit information about, or evaluate the person's business decisions with respect to, the person's service, customer demand, or quality of service to or from a particular area or site as a condition for approval of the request;
- Requiring a person to submit information about the need for the small cell facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds, as a condition for approval of the request;
- Requiring a person to justify the need for the new small cell facility or associated wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies as a condition for approval of the request;
- Requiring the removal of existing wireless support structures or small cell facilities, wherever located, as a condition for approval of the request, unless the existing wireless support structures or small cell facilities have been unused or abandoned (or pursuant to reasonable rules to protect the public health, safety, and welfare);
- Imposing restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the Federal Aviation Administration;
- Unreasonably discriminating among providers of functionally equivalent services;
- Conditioning the grant of consent on the requirement that a person purchase or lease facilities, networks, or services owned or operated by the municipal corporation, in whole or in part, or owned or operated, in whole or in part, by any entity in which the municipal corporation has an economic governance interest;
- Conditioning the grant of consent on the *requestor's* agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure (the use of "requestor" instead of "person" is inconsistent with the other limitations in this section);
- Imposing setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other similar types of structures in the public way;
- Imposing environmental testing, sampling, or monitoring requirements that exceed rules and regulations established under state or federal law or



that are not imposed on other types of construction or elements of the construction;

- Imposing any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the Federal Communications Commission; and
- Except as provided under "**Authority granted to municipal corporations**," discussed below, imposing separation requirements regarding spacing between an *operator's* facilities and other wireless facilities, wireless support structures, utility poles, ground-mounted equipment, or other utility facilities within the public way (this limitation is the only one of the micro wireless limitations applied to small cell facilities and wireless support structures that appears to expressly apply only to operators).

Micro wireless limitations not applied to small cell/wireless support structures

The act repeals, and by doing so, does not impose on small cell facilities or associated wireless support structures in a municipal public way the prohibitions against the following (that applied regarding municipal authority over micro wireless facilities):

- Imposing requirements for bonds, escrow deposits, letters of credit, or other financial surety to ensure removal of abandoned or unused facilities.²⁹ The act, however, explicitly grants permission to impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of "abandoned" (see "**Definition changes**") or unused wireless facilities or damage to municipal property caused by an operator or its agent.³⁰
- Imposing unreasonable requirements for maintenance or appearance of facilities.³¹ Here too, the act explicitly grants a municipal corporation the authority to adopt reasonable design guidelines (see "**Authority granted to municipal corporations: Other authority**").³²

²⁹ R.C. 4939.0315(G), as codified under former law.

³⁰ R.C. 4939.0314(J).

³¹ R.C. 4939.0315(I), as codified under former law.

³² R.C. 4939.0314(C).



- Limiting the duration of any permit that was granted, but permitting a municipal corporation to require construction to commence within two years.³³
- Evaluating requests based on the availability of other potential locations for placement.³⁴ The act, however, permits a municipal corporation to propose alternate locations for proposed wireless support structures (see "**Authority granted to municipal corporations: Other authority**").³⁵
- Preventing requestors from locating facilities or structures in a residential area or within a specific distance from a residence or other structures.³⁶

Authority granted to municipal corporations

The act permits municipal corporations to do the following regarding placement of small cell facilities and wireless support structures in the municipal public way.

Completion within 180 days

A municipal corporation may require collocation or a new wireless support structure to be completed within 180 days after issuance of a permit, unless extended by agreement between the operator and municipal corporation or a delay is caused by make-ready work for a municipally owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site. Regarding the extension for commercial power or backhaul availability, the operator must have made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services and the additional time to complete installation cannot exceed 360 days after issuance of the permit. Otherwise, the permit is void unless the municipal corporation grants the operator a written extension.³⁷

Height restrictions

A municipal corporation may set certain restrictions for the height of a wireless support structure and the placement of a wireless facility as follows:

³³ R.C. 4939.0315(L), as codified under former law.

³⁴ R.C. 4939.0315(D), as codified under former law.

³⁵ R.C. 4939.0314(D).

³⁶ R.C. 4939.0315(Q), as codified under former law.

³⁷ R.C. 4939.0314(E).



- For an existing wireless support structure, the antenna and any associated shroud or concealment material may be collocated at the top of the existing structure, but may not increase the height by more than five feet;
- For a new wireless support structure and any collocated antennas, the overall height must not be more than 40 feet above ground level;
- Notwithstanding these provisions granting municipal corporations authority to set height restrictions, and except that the cap must not be below 35 feet in height above ground level, a municipal corporation may adopt design guidelines to cap the height of small cell facilities in areas meeting the following criteria:
 - The area is within 300 feet of the proposed site for a new wireless support structure in the same or connecting public way, and there are no wireless support structures or utility poles taller than 30 feet above ground level;
 - The maximum allowable height for building construction in the underlying zoning district is 35 feet above ground level or less.³⁸

Given that the authority for municipal corporations to set height restrictions under the act is discretionary, it is not clear what "notwithstanding" these height provisions means or accomplishes.

Other authority

A municipal corporation may also do any of the following (some of which apply only to operators):

- Reserve municipal public way space or space on a municipally owned wireless support structure or pole for future public safety or transportation uses, in accordance with an approved plan, if reservation does not preclude placement of a pole or collocation of a small cell facility;
- Require an operator to pay for the replacement of a municipally owned pole or wireless support structure if replacement is necessary to accommodate small cell facility collocation and future public safety or transportation use and require the replaced pole and structure to accommodate the future use;

³⁸ R.C. 4939.0314(F).

- Require reasonable and nondiscriminatory spacing requirements for new wireless support structures, if the requirements do not prohibit or have the effect of prohibiting the provision of wireless service to any location;
- Adopt reasonable design guidelines with objective, technologically feasible criteria reasonably matching the aesthetics and character of the immediate area regarding the following and apply them in a nondiscriminatory manner:
 - The location of ground-mounted small cell facilities;
 - The location of a small cell facility on a wireless support structure;
 - The appearance and concealment of small cell facilities;
 - The design and appearance of a wireless support structure.
- Propose alternate locations for proposed wireless support structures within 100 feet of the proposed location or within a distance that is equivalent to the width of the public way in or on which the new wireless support structure is proposed, whichever is greater, which the operator must use if it has the right to use the location on reasonable terms and conditions and if the location does not impose technical limits or additional costs.
- Require an operator to comply with reasonable and nondiscriminatory requirements prohibiting the installation of structures and facilities in the public way because an area (1) is designated solely for undergrounding or (2) facilities and structures are required to be placed elsewhere, if the following apply:
 - The municipal corporation has required all structures and facilities (including those owned by a municipal electric company, but except for those owned by a municipal corporation or a transit authority) to be placed underground or elsewhere in the public way or a utility easement by a date that is three months prior to the submission of the application;
 - Subject to the municipal public way usage law, the municipal corporation does not prohibit the replacement of wireless support structures or the collocation of small cell facilities on wireless support structures in the designated area;
 - The municipal corporation permits operators to seek a waiver of the undergrounding or alternative location requirements for a new

wireless support structure to support small cell facilities (provided that waivers are processed in a reasonable and nondiscriminatory manner that does not effectively prohibit wireless service) if the operator is unable to achieve its service objective using a small cell facility (1) from a location in the public way where the prohibition does not apply, (2) in a utility easement the operator has the right to access, or (3) in or on other suitable locations or structures made available by the municipal corporation at reasonable rates, fees, and terms.

- Require reasonable, technically feasible, and nondiscriminatory design or concealment measures in an "historic district" (see "**Definition changes**"), provided that the measures do not have the effect of prohibiting any operator's technology and that they are not considered a part of the size restrictions for a small cell facility.
- Resolve conflicting requests for installation due to spacing, setback, or fall zone requirements through a reasonable and nondiscriminatory manner deemed appropriate by the municipal corporation.
- Impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to municipal property caused by an operator or its agent.³⁹

Fees

Under the act, the fee imposed for granting or processing an application for consent for placement of a small cell facility in a municipal public way may not exceed a one-time fee of \$250 per small cell facility.⁴⁰ Similarly, the total annual charges to reimburse a municipal corporation for a collocation attachment on a wireless support structure owned by the municipal corporation may not exceed \$200.⁴¹

Adjustment every five years

Beginning on the act's effective date, a municipal corporation may adjust the above amounts by 10% every five years, rounded to the nearest \$5. During each five-year period, the adjustment may be made incrementally or as a single adjustment.⁴²

³⁹ R.C. 4939.0314.

⁴⁰ R.C. 4939.0316 specifies this fee is charged pursuant to R.C. 4939.031, but that section imposes no fee.

⁴¹ R.C. 4939.0322(B).

⁴² R.C. 4939.0316 and 4939.0322(B).



Other placement fees prohibited

A municipal corporation may not charge an operator any fees or other charges for a small cell facility or associated wireless support structure other than the fees described above, work permit fees, and financial sureties. The act also states that these fees are not public way fees.⁴³ Under continuing law, a municipal corporation may levy public way fees based on costs that the municipal corporation has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of a municipal public way.⁴⁴

No tax liability for a municipal corporation

The act specifies that a municipal corporation is not subject to any state or local tax liabilities or assessments for (1) the placement of small cell facilities in the municipal public way or attachment of small cell facilities to a wireless support structure and (2) any associated fees imposed.⁴⁵

Attachment terms and termination

Under the act, a municipal corporation's approval term of an attachment to a wireless support structure must be at least ten years, with a presumption of renewal for successive five-year terms. The renewal is subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the municipal corporation, except for generally applied permitting to safeguard the public health, safety, and welfare. However, at any time an operator may remove its small cell facilities, subject to work permit requirements and stop paying annual charges or fees imposed for collocation/attachment on a municipally owned or operated wireless support structure.⁴⁶

Indemnification

An operator who owns or operates small cell facilities or wireless support structures in the municipal public way must indemnify, protect, defend, and hold the municipal corporation and its elected officials, officers, employees, agents, and volunteers harmless against all claims, lawsuits, judgments, costs, liens, losses, expenses, fees, and suits of any kind and nature to the extent that the harm is caused by the negligence of the operator who owns or operates (or the operator's agents,

⁴³ R.C. 4939.0322(C).

⁴⁴ R.C. 4939.05, not in the act.

⁴⁵ R.C. 4939.0322(D).

⁴⁶ R.C. 4939.0317.



representatives, employees, etc.) the small cell facility and wireless service in the public way.⁴⁷

Consent not required

The act restricts a provision in continuing law, providing that consent of a municipal corporation is not required for the replacement of wireless facilities with certain other wireless facilities. Under the act, the replacement facilities must be consistent with the municipal corporation's current design guidelines to avoid consent.⁴⁸

Control over facility not owned/controlled by municipal corporation

The act repealed the law that denied municipal corporations the jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation. Under the new regulatory structure, the act does not include a provision addressing municipal corporation jurisdiction over small cell facilities in an interior structure that the municipal corporation does not own or control.⁴⁹

Other provisions

The act also does the following:

- Provides that, to the extent that any of the following are not operators, the provisions of the municipal public way usage law that apply primarily to operators is not to be construed to modify, add to, replace, or supersede any construction standard or engineering practice, tariff, contractual obligation or right, or federal or state law or regulation regarding utility poles, similar structures, or any type of equipment they own or control: (1) investor-owned electric utilities or their affiliates, (2) electric cooperatives, or (3) independent transmission companies.⁵⁰
- Permits any person to construct, modify, or maintain a "utility pole" (see "**Definition changes**") or wireless support structure along, across,

⁴⁷ R.C. 4939.039.

⁴⁸ R.C. 4939.0311(A).

⁴⁹ R.C. 4939.0321, repealed by the act.

⁵⁰ R.C. 4939.0322(E).



and under a municipal public way in excess of the size limits, to the extent permitted by the municipal corporation's regulations.⁵¹

- Requires an operator, on request of a municipal corporation, and in order to accomplish construction and maintenance activities directly related to health, safety, and public welfare improvements, to relocate or adjust its facilities in the municipal public way at no cost to the municipal corporation and in accordance with local law, if the request similarly binds all users.⁵²

Applicability of the act

The act provides that, notwithstanding the amendments and enactments made in the act to the municipal public way usage law, a cable or video service provider is not required to obtain permits from a municipal corporation or pay fees. However, the cable or video service provider is still required to obtain work permits and pay associated fees to place, operate, maintain, or replace micro wireless facilities under an existing franchise or video service authorization under the Fair Competition in Cable Operations law.

A holder of an existing franchise or video service authorization is also not required to obtain additional authorizations or pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization under the Fair Competition in Cable Operations law.⁵³

The permitting procedures and authorizations set forth by the amendments and enactments made in the act, however, apply only to the placement of small cell facilities and wireless support structures in the municipal public way, and do not authorize the construction and operation of a "wireline backhaul facility" (see "**Definition changes**" below).⁵⁴

Definition changes

New terms

The act defines, within ongoing municipal corporation public way usage law, new terms described below that are associated with small cell facilities and their construction and attachment.

⁵¹ R.C. 4939.0329.

⁵² R.C. 4939.08.

⁵³ R.C. 4939.0311(C).

⁵⁴ R.C. 4939.0311(D).



Term	Definition
Abandoned	Any small cell facilities or wireless support structures that are unused for a period of 365 days without the operator otherwise notifying the municipal corporation and receiving the municipal corporation's approval. ⁵⁵
Collocation or collocate	To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure. ⁵⁶
Decorative poles	Structures, other than street light poles, placed in the public way specifically designed and placed for aesthetic purposes and on which there are limited attachments. ⁵⁷
Historic district	A building, property, or site, or group of buildings, properties, or sites that are either (1) listed or formally determined to be eligible to be listed in the National Register of Historic Places or (2) a Registered Historic District under Ohio law. ⁵⁸
Micro wireless facility	A small cell facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length suspended on cable strung between wireless support structures. ⁵⁹
Operator	<p>A wireless service provider (that provides mobile wireless service but not fixed wireless service – see definition below), cable operator, or video service provider that:</p> <ul style="list-style-type: none"> • Operates a small cell facility; and • Provides fixed or mobile wireless service, information services, and services that are fixed in nature or use unlicensed spectrum.⁶⁰ <p>For the purposes of submitting an operator's request for consent to collocate small cell facilities or construct wireless support structures in the municipal public way, the act includes as an "operator" any person that, at the time of filing the request, provides the person's written authorization to perform the specific work for which consent has been requested on behalf of an operator.⁶¹</p>
Video service provider	Has the same meaning as in ongoing law, which means a person granted a video service authorization under Ohio law governing video service authorizations. ⁶²

⁵⁵ R.C. 4939.01(A).

⁵⁶ R.C. 4939.01(D).

⁵⁷ R.C. 4939.01(E).

⁵⁸ R.C. 4939.01(G).

⁵⁹ R.C. 4939.01(H).

⁶⁰ R.C. 4939.01(K). To be a wireless service provider under the act, a person cannot provide fixed wireless service. See R.C. 4927.01(A)(19). But, under the act, a wireless service provider that provides services *that are fixed in nature* is included as an operator.

⁶¹ R.C. 4939.031(A), (B), and (E).

⁶² R.C. 4939.01(R) and 1332.21, not in the act.



Term	Definition
Wireless service provider	Is a person who provides "wireless service" as defined in Ohio law governing Alternative Regulation of Telecommunications, which is federally licensed commercial mobile service and commercial mobile radio service, as defined in federal law and rules. "Commercial mobile radio service" is limited to mobile telephone, mobile cellular telephone, paging, personal communications service, and specialized mobile radio service provided by a common carrier in Ohio and <i>excludes fixed wireless service</i> . ⁶³
Wireline backhaul facility	A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire. ⁶⁴
Work permit	A permit issued by a municipal corporation that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of a public way, including, for example, digging, obstructing, or installing. ⁶⁵

Amended terms

The act amends the following continuing law definitions as described below:

Term	Definition
Antenna	Communications equipment that transmits or receives radio frequency signals in providing wireless service, but as amended by the act, excluding associated "accessory equipment," a term repealed by the act. ⁶⁶
Public utility	Companies defined as public utilities under Ohio's public utility laws, electric suppliers, and, as amended by the act and defined in Ohio law governing Alternative Regulation of Telecommunications, wireless service providers. ⁶⁷
Public way	The surface of, and space within, through, on, across, above, or below public ways such as streets, roads, and paths, and is amended by the act to include public easements. ⁶⁸
Small cell facility	A wireless facility, amended by act to remove the 50-foot height limitation (if a facility were placed on a wireless support structure), that: <ul style="list-style-type: none"> • Has antenna in an enclosure not exceeding six cubic feet in volume or, in case of an antenna with exposed elements, the antenna and its elements could fit within such an enclosure; and

⁶³ R.C. 4939.01(U); R.C. 4927.01, not in the act.

⁶⁴ R.C. 4939.01(W).

⁶⁵ R.C. 4939.01(X).

⁶⁶ R.C. 4939.01(B).

⁶⁷ R.C. 4939.01(M).

⁶⁸ R.C. 4939.01(N).



Term	Definition
	<ul style="list-style-type: none"> Has associated wireless equipment (excluding such items as electric meters and power connections) that is cumulatively not more than 28 cubic feet in volume.⁶⁹
Utility pole	A structure designed for or used to carry lines, cables, or wires for electric or telecommunications service but, as amended by the act, excludes street signs and decorative poles. ⁷⁰
Wireless facility	<p>As amended by the act means:</p> <ul style="list-style-type: none"> Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications, radio transceivers, antennas, cables, power supplies, and comparable equipment; and Small cell facilities; but Excludes the structure or improvements on, under, or within which the equipment is collocated; and coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.⁷¹
Wireless service	As amended by the act, any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided <i>to the public</i> using wireless facilities. ⁷²
Wireless support structure	<p>As amended by the act, a pole, street light pole, traffic signal pole, a 15-foot or taller sign pole, or utility pole capable of supporting small cell facilities, but not a utility pole or other facility:</p> <ul style="list-style-type: none"> Owned or operated by a municipal electric utility; or Used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.⁷³

Repealed terms

The act also repealed the definitions for "accessory equipment," "distributed antenna system," "micro wireless facility," and "micro wireless facility operator" in conjunction with the act's change of focus to small cell facilities.⁷⁴

⁶⁹ R.C. 4939.01(P).

⁷⁰ R.C. 4939.01(Q).

⁷¹ R.C. 4939.01(S).

⁷² R.C. 4939.01(T).

⁷³ R.C. 4939.01(V).

⁷⁴ R.C. 4939.01.



HISTORY

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