Introduced in Council on above date and referred to Committee on February 27, 2024

COMMUNITY DEVELOPMENT

City Clerk

Scranton, PA March 12, 2024

Committee on Community Development reports favorably on the within ordinance

VICE Chair

SIXTH ORDER:
March 5, 2024

FILE OF THE COUNCIL NO. 9

2024

AN ORDINANCE

ESTABLISHING REGULATIONS GOVERNING THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF SCRANTON.

WHEREAS, telecommunication services are expanding and including but not limited to fiber optic cable and internet; and

WHEREAS, broadband internet providers are interested in expanding their services and customer base within the Greater Scranton area for numerous reasons;

WHEREAS, the City of Scranton wants to ensure that the growth of these services are done in a responsible manner and in respect of the City of Scranton's roadways and right of ways; and

WHEREAS, the City of Scranton seeks to minimize costs to residential and commercial users, and promote the installation, operation and maintenance methodologies that maximize dependability and resiliency for her residents; and

WHEREAS, the City of Scranton Office of Code Enforcement and its Department of Public Works require direct contact information of utility providers to ameliorate disputes and issues during planning, permitting, and/or installation of services, including but not limited to broadband cable/internet; and

WHEREAS, time is of the essence due to many broadband service providers being interested in developing their telecommunications network and service in the City of Scranton and are seeking to do so as of this filing.

NOW THEREFORE, BE IT ORDAINED THAT CHAPTER 445, ZONING, OF THE CODE OF ORDINANCES OF THE CITY OF SCRANTON IS HEREBY AMENDED AS FOLLOWS:

* * *

SECTION 1. AMENDMENT OF CHAPTER 349 OF THE CODE OF ORDINANCES OF THE CITY OF SCRANTON

Chapter 349, "Poles and Wires," of the Code of Ordinances of the City of Scranton is hereby repealed in its entirety and replaced with a new Chapter 349 entitled and provided for as follows:

CHAPTER 349
RIGHT-OF-WAY MANAGEMENT

§ 349-1 Definitions.

A. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; words in the singular shall include the plural; and words in the masculine shall include the feminine and the neuter.

B. The following words, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise.

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City Clerk

1. *Aerial Facilities* – Poles, wires, cables, equipment, and other facilities attached to utility poles or otherwise located above the surface of the ground, including their underground supports and foundations.

2. *Applicant* – Any natural person, corporation, Limited Liability Company, trust, joint venture, association, company, partnership, governmental authority or other entity that is seeking a Right-of-Way Use Agreement and/or Right-of-Way Construction Permit in order to construct, operate, and maintain facilities in the right-of-way.

3. *Cable Act* – The Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as hereafter amended (47 U.S.C. §§ 521 et seq., as hereafter amended).

4. *Cable Franchise* – Authorization granted by the City in accordance with the Cable Act, authorizing a person to own, construct, operate and maintain a cable system to provide cable service within the City.

5. *Cable Operator* – A person providing or offering to provide cable service over a cable system within the City as that term is defined in the Cable Act.

6. *Cable Service* - The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

7. *City* – The City of Scranton, County of Lackawanna, Commonwealth of Pennsylvania.

8. *Emergency* – A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, as determined by the City in its sole discretion.

9. *Facilities* – Conduit, pipes, cables, wires, lines, towers, optic fiber, antennae, poles, associated equipment and appurtenances, and any other infrastructure or materials located in the Right-of-Way and designed, constructed, and/or used, by right-of-way occupants for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, or any other form of energy, signal or substance, or for any other lawful purpose.

10. *Public Utility* – Any entity that is currently certificated as a public utility by the Public Utility Commission of the Commonwealth of Pennsylvania.

11. *Public Utility Commission (PUC)* – The Public Utility Commission of the Commonwealth of Pennsylvania.

12. *Rights-of-Way* – The surface and the area across, in, over, along, under and upon the public streets, roads, lanes, avenues, alleys, sidewalks, bridges, highways and other rights-of-way, as the same now or may thereafter exist, which are under the jurisdiction or control of the City of Scranton.

13. *Right-of-Way Occupant* – An applicant for, or recipient of, a Right-of-Way Agreement, Right-of-Way Construction Permit or Cable Franchise that is issued by the City pursuant to this Chapter, and persons holding existing franchises, special ordinances, or other authorizations for use of the rights-of-way, or otherwise maintaining facilities in the rights-of-way including the City, its departments, agencies, and authorities.

14. *Right-of-Way Construction Permit* or *Permit* – A permit issued by the City authorizing use of the public rights-of-way pursuant to this Ordinance.

15. *Right-of-Way Use Agreement* – An agreement authorizing use of the rights-of-way by a person seeking to construct, maintain, and operate Facilities within the rights-of-way of the City of Scranton.

16. *Underground Facilities* – Facilities located under the surface of the ground, excluding the underground foundations or supports for aerial facilities.

§349-2 Applicability.

A. The requirements of this Ordinance shall govern the construction, maintenance and operation of Facilities within the Rights-of-Way of the City of Scranton, unless otherwise prescribed in an Ordinance of the City or a valid agreement between the City and any Right-of-Way Occupant.

§349-3 Administration.

A. Administration of the Rights-of-Way shall be the responsibility of the City Building Code Official or their designee.

§349-4 Right-of-Way Use Agreement.

A. All Right-of-Way Occupants that are not Public Utilities shall be required to execute a valid Right-of-Way Use Agreement with the City. The execution of a valid Right-of-Way Use Agreement shall be prerequisite to the issuance of any Right-of-Way Construction Permit authorizing the construction of Facilities in the Rights-of-Way.

B. No Right-of-Way Use Agreement shall be required for any Cable Operator that is party to a valid Cable Franchise with the City. Any Cable Operator seeking to provide service in the City shall be required to obtain a valid Cable Franchise from the City prior to providing cable service in the City.

§349-5 Permits Required.

A. Unless otherwise provided in this Chapter, no Right-of-Way Occupant may construct or obstruct any Facilities in the Rights-of-Way without first having obtained a Right-of-Way Construction Permit from the City in accordance with the requirements of this Chapter.

B. Right-of-Way Construction Permit Requirements.

1. A Right-of-Way Construction Permit shall authorize the Right-of-Way Occupant to construct only those Facilities expressly specified by the Right-of-Way Construction Permit. Such authorization shall be valid only for the dates and area(s) of the Rights-of-Way specified in such Right-of-Way Construction Permit.

2. Upon the expiration of a valid Right-of-Way Construction Permit, the Right-of-Way Occupant must immediately cease all construction activity contemplated by the expired Permit until such time as a new Right-of-Way Construction Permit is granted to the Right-of-Way Occupant by the City.

3. No Right-of-Way Construction Permit shall be required for the installation, repair or maintenance of Facilities by or for the City.

C. Emergency repairs may be undertaken without first obtaining a Right-of-Way Construction Permit, provided however that the Right-of-Way Occupant must inform the City Building Code Official of such repairs as immediately as is practicable and shall apply for a Right-of-Way Construction Permit within 24 hours of the onset of the Emergency. Such application shall include all information required by Section 349-6 and shall provide a detailed written description of the Emergency and the work that was performed to remedy, whether completed or ongoing, to address such issues as have arisen from the Emergency.

§349-6 Permit Application Process.

A. An application for a Right-of-Way Construction Permit shall be submitted to the City Code Enforcement Officer. Applications for Right-of-Way Construction Permits shall be submitted in writing.

B. An application for a Right-of-Way Construction Permit shall include, at minimum, the following information:

1. The firm name, primary contact name, address, e-mail and telephone number of each Applicant by or for whom Facilities will be installed in the Rights-of-Way. If the proposed project involves multiple parties, contractors, or subcontractors, then the application shall include the firm name, primary contact name, address, and e-mail and telephone contact information of each party along with a description of the work to be performed by each party. The City reserves the right to deny an application for failure to provide contact information (including but not limited to phone number and email address) that allows the City and/or its designee to directly communicate with a representative in live time and as appropriate during business hours. Further, it is the duty of the permittee to update this information within three business days with the City should a contact's information change and/or should the contact leave or change positions thereafter. Failure to comply may result in adverse action and/or revocation of a permit.

2. A detailed description of the work to be performed pursuant to the Right-of-Way Use Permit, including all construction activity, the locations of such construction activity, and all Facilities that will be constructed or installed.

3. Insurance documentation showing the following:

   a. Verification that an insurance policy has been insured to the Applicant by an insurance company licensed to do business in the Commonwealth of Pennsylvania or a form of self-insurance acceptable to the City.

   b. Verification that the Applicant is insured as required by Section 349-7C of this Ordinance or applicable law.

   c. The City may require a copy of the actual insurance policies.

4. A copy of the Applicant's Right-of-Way Use Agreement, Certificate of Public Convenience and Necessity from the Public Utility Commission, or other legal authorization granting permission to occupy the Rights-of-Way.

5. Construction plans or other documentation clearly showing the proposed Facilities to be constructed in the Rights-of-Way, all construction activity necessary in order to construct such Facilities, all locations that will be affected by such construction, and the anticipated timeline for completion of all construction.

6. If traffic control will be required as part of the construction, a traffic control plan shall be submitted as part of the application.

7. If excavation is required, the Applicant shall also be required to obtain a Street Opening Permit in accordance with the requirements of Chapter 412, Article III of the City Code.

8. If the proposed Facilities will be attached to utility poles or other property owned by a party other than the Applicant, documentation shall be submitted showing that the Applicant has obtained permission to attach the proposed Facilities to such utility poles or other property.

9. All fees required by this Ordinance, any other applicable provision of the City Code and the City fee schedule.

C. Approval.

1. Upon a determination that an application for a Right-of-Way Construction Permit is complete and satisfies all requirements of this Ordinance, and that the Applicant does not have a substantial history of non-compliance with the City Code that has not been

remedied, the City Building Code Official or their designee shall issue a Right-of-Way Construction Permit within ten (10) business days of the filing of the application.

2. If an application is incomplete or otherwise fails to comply with the requirements of this Ordinance, the City Building Code Official shall issue a notice of denial, specifying the reasons for the denial, within ten (10) business days of the filing of the application.

3. The City Building Code Official or their designee may include in the issuance of any Right-of-Way Construction Permit such reasonable conditions as are necessary to protect the public health, safety and welfare of City residents and preserve the Rights-of-Way, consistent with applicable federal and state law.

4. A Right-of-Way Construction Permit shall be valid for a period of one hundred eighty (180) days from the date of issuance, unless otherwise specified by the City Building Code Official upon issuance of the Right-of-Way Construction Permit. If an Applicant will need additional time to perform the activity contemplated by the Right-of-Way Permit, the Applicant shall request such additional time as part of the application.

5. At any time prior to the expiration of a Right-of-Way Construction Permit, Right-of-Way Occupant may request an extension of the Right-of-Way Construction Permit by submitting a written request to the City Engineer. Such request shall state the length of extension requested and shall provide an explanation as to why such extension is necessary. The City Engineer may grant or deny such requests in their sole discretion.

D. Appeal.

1. Any Applicant or Right-of-Way Occupant seeking that wishes to appeal a decision of the City Building Code Official under this Chapter may do so by filing an appeal with the Scranton Board of Appeals ("SBA") within thirty (30) days of receipt of any denial, notice of violation, or any other notice issued pursuant to the requirements of this Chapter.

2. Any sueh appeal shall clearly state the application or violation number for which the appeal is being filed, the name, address and contact information of the Applicant or Right-of-Way Occupant, and the reason for the appeal.

3. A public hearing on such appeal shall be held within thirty (30) days of filing of the appeal with the Scranton Board of Appeals ("SBA"). Final decision on the appeal shall be issued within ten (10) days of such public hearing.

§349-7 Fees.

A. The City Council may establish by resolution such fees as are deemed necessary for the issuance and extension of Right-of-Way Construction Permits.

B. No Permit shall be issued or extended without the payment of all applicable fees. All fees are non-refundable.

C. Occupancy of City Rights-of-Way by any Right-of-Way Occupant, excluding Public Utilities, is subject to the City's right to fix annually a fair and reasonable compensation, which shall be directly related to the City's actual Right-of-Way maintenance costs. Any such fee shall be determined by the City and authorized by resolution of City Council.

D. Cable Operators party to a valid Cable Franchise Agreement with the City shall not be required to remit both a cable franchise fee and an annual Right-of-Way Maintenance Fee to the City.

§349-8 Construction in the Rights-of-Way.

A. Scope of Work. A Right-of-Way Occupant shall be permitted to perform the work detailed in the Right-of-Way Construction Permit. No additional work may be performed that is not included in the Right-of-Way Construction Permit.

B. Standard of Care. Each Right-of-Way Occupant shall perform construction activity in a manner consistent and in compliance with the plans it submitted to the City pursuant to Chapter 412, Article III of the City Code, all applicable industry standards and codes and applicable federal, state and local laws and regulations.

C. Pave Cut Permit. Except in the case of an Emergency, no Right-of-Way Occupant shall perform any street excavation in the Rights-of-Way without first obtaining a Street Opening Permit and paying the applicable fees pursuant to Chapter 412, Article III of the City Code. The procurement of a Street Opening Permit shall only be necessary when the proposed street excavation and/or construction impacts City streets; it shall not apply to any construction or excavation activities on state roads.

D. One Call. Whenever a Right-of-Way Occupant or any of its contractors or subcontractors shall disturb any pavement, sidewalk or other public property in order to perform any underground activities, such Right-of-Way Occupant will fully comply by registering with the state's "One Call" system pursuant to 73 P.S. §§ 176 et seq. Such Right-of-Way Occupant shall provide the City with information showing planned locations and reference points for equipment to be installed.

E. Insurance. Each Right-of-Way Occupant shall file with the City Building Code Official properly executed certificates of insurance verifying that the Right-of-Way Occupant is insured against claims for personal injury as well as against claims for property damage which may arise from the Right-of-Way Occupant's activities within the City, whether such activities be performed by the Right-of-Way Occupant or anyone directly or indirectly employed by or contracted by the Right-of-Way Occupant, or such other insurance as is required by applicable law. Liability insurance for bodily injury and property damage shall be an amount not less than one million dollars ($1,000,000) for each accident and two million dollars ($2,000,000) in the aggregate. The Right-of-Way Occupant shall save and hold harmless the City from any and all damages and liability by reason of personal injury or property damage arising from work done by the Right-of-Way Occupant under the provisions of this Ordinance.

F. Relocation or Removal of Facilities. Within sixty (60) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an Emergency, a Right-of-Way Occupant that is not a Public Utility shall temporarily or permanently remove, relocate, change or alter the position of any Facilities within the Right-of-Way, excluding those underground, whenever the City, consistent with applicable PUC regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

1. The construction, repair, maintenance, or installation of any City or other public improvement in the Right-of-Way;

2. The operations of the City or other governmental entity in the Right-of-Way;

3. Vacation of a Street or the release of a utility easement; or

4. An Emergency as determined by the City.

G. Restoration of Property. A Right-of-Way Occupant, including any contractor working for a Right-of-Way Occupant, shall avoid any damage or disturbance to any public or private property in the Rights-of-Way. If any public or private property is damaged by the Right-of-Way Occupant, including any contractor working for the Right-of-Way Occupant, the Right-of-Way Occupant shall promptly repair and restore such property within ten (10) business days. In the event that the Right-of-Way Occupant fails to restore such property to its former condition within ten (10) business days, the City may repair such property itself and assess all such costs of such repair to the Right-of-Way Occupant.

H. Damage to Trees. If a Right-of-Way Occupant shall cause damage to any tree on public or private property, the Right-of-Way Occupant shall either replace the tree with a tree of comparable quality or fully compensate the property owner for any damage to such tree.

I. Indemnification. Each Right-of-Way Occupant shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Right-of-Way Occupant, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of Right-of-Way Occupant's Facilities in the Rights-of-Way. Each Right-of-Way Occupant shall defend any actions or proceedings against the City in which it is claimed that personal injury, including death, or property damage was caused by the Right-of-Way Occupant's construction, installation, operation, maintenance, or removal of Right-of-Way Occupant's Facilities in the Rights-of-Way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

§349-9 Maps.

A. Within thirty (30) days of completion of any construction authorized by a Right-of-Way Construction Permit, and upon request thereafter, each Right-of-Way Occupant shall submit to the City Building Code Official two paper copies and one electronic copy of maps depicting and certifying the location of all its existing Facilities within the Right-of-Way.

§349-10 Penalties.

A. Notice; Opportunity to cure.

1. If a Right-of-Way Occupant is found to be in violation of any of the requirements of this Ordinance, the City Building Code Official shall notify such Right-of-Way Occupant in writing of the nature of the violation. Upon receipt of such notice, the Right-of-Way Occupant shall have ten (10) business days to correct such violation. If the nature of the violation is such that more than (10) business days is required to correct the violation, then the timeframe for remedy may be extended by City Building Code Official upon a showing by the Right-of-Way Occupant that additional time is necessary and that the Right-of-Way Occupant is diligently pursuing a cure.

2. If a Right-of-Way Occupant fails to correct any violation within the timeframes detailed above, then the Right-of-Way Occupant shall be subject to such penalties as are contemplated by this Ordinance.

B. Penalties.

1. Any person violating any provision of this Ordinance shall be fined up to one thousand dollars ($1,000.00) for each and every violation. Each failure to comply with the requirements of this Ordinance, and each and every day during which such violation continues, shall constitute a separate offense.

2. If any Public Utility violates any provision of this Ordinance, the City may file a petition with the Public Utility Commission, detailing the nature of the violation and requesting such relief as is deemed appropriate by the Public Utility Commission.

C. Denial of future permits. The City Building Code Official reserves the right to deny the issuance of future permits to any person who is in violation of the requirements of this Ordinance. This provision shall in no way prohibit or limit the right of the City to bring legal action against a Right-of-Way Occupant.

§349-11 Wireless Communications Facilities in the Public Rights-of-Way.

The following regulations shall apply to all Wireless Communications Facilities located inside the Rights-of-Way:

A. Location Requirement. Small WCFs inside the Rights-of-Way shall be a permitted use in all City zoning districts, subject to the requirements of this Section 349-10 and generally applicable permitting as required by the City Code.

B. Application Requirements.

1. Applications for Small WCFs shall be submitted to the City Code Enforcement Officer.

2. Applications for Small WCFs shall include the following:

(a) The firm name, primary contact name, address, phone number and email address for both the WCF Applicant and the owner of the proposed Small WCF, if different. If the proposed project involves multiple parties, contractors, or subcontractors, then the application shall include the firm name, primary contact name, address, and e-mail and telephone contact information of each party along with a description of the work to be performed by each party.

(b) A cover letter detailing the location of the proposed Small WCF, all equipment being proposed as part of the Small WCF, and a certification that the WCF Applicant has included all information required by the City Code, signed by the representative of the WCF Applicant responsible for preparation of the application.

(c) A before-and-after depiction of the proposed site, such as a construction drawing, showing all equipment being proposed as part of the Small WCF.

(1) If the Small WCF is proposed for location on an existing structure or replacement Wireless Support Structure that currently supports existing attachments, the depiction shall show the location and dimensions of all such attachments.

(2) If installation of a new or replacement Wireless Support Structure is being proposed, the depiction shall include the color, dimensions, material and type of Wireless Support Structure proposed.

(d) The manufacturer and model, proposed location, and physical dimensions (including volume) of each piece of equipment proposed as part of the Small WCF.

(e) An aerial photograph of the proposed site showing the area within 500 feet of the Small WCF. The aerial photograph shall identify all structures within such radius.

(f) Photo simulations depicting the Small WCF from at least three locations near the proposed site. The photo simulations should reflect the site as it currently exists and the site as it would appear following construction of the Small WCF, clearly showing the proposed design and location of all equipment associated with the Small WCF.

(g) If the proposed Small WCF will be located on a structure owned by a party other than the WCF Applicant, proof that the WCF Applicant has obtained permission from the owner of the structure upon which the WCF will be attached allowing for construction of the proposed WCF.

(h) A written certification by a structural engineer licensed in the Commonwealth of Pennsylvania confirming that the proposed Small WCF and Wireless Support

Structure, as designed, are structurally sound and shall not endanger public health and safety.

(i) A report by a qualified engineering expert which shows that the Small WCF will comply with applicable FCC regulations, including applicable standards for radiofrequency emissions.

(j) Proof of compliance with all applicable requirements of this Section 349-10.

(k) All application fees required by the City as detailed in the City fee schedule.

C. Denial and resubmission.

1. If the City denies an application for a Small WCF, the City Building Code Official shall provide the WCF Applicant with written documentation of the basis for denial, including the specific provisions of the City Code on which the denial was based, within five (5) business days of the denial.

2. The WCF Applicant may cure the deficiencies identified by the City Building Code Official and resubmit the application to the City Building Code Official within thirty (30) days of receiving the written basis for the denial without being required to pay an additional application fee. The City Building Code Official shall approve or deny the revised application within thirty (30) days of the application being resubmitted for review.

D. Standard of Care.

1. All WCFs shall be designed, constructed, and maintained in strict compliance with the applicable requirements of the FCC and any other federal, state or local regulatory authority, and all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, and the structural standards of the American Association of State Highway and Transportation Officials or any other industry standard applicable to the structure. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or damage any property in the City.

2. If such standards or regulations are changed, the owner of the WCF shall bring such WCF into compliance with the revised standards within six (6) months of the effective date of such standards or regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring such facilities into compliance shall constitute grounds for revocation of the zoning permit for the WCF.

3. All Facilities shall comply with the applicable requirements of the Americans with Disabilities Act ("ADA"), and every other local, state, and federal law and regulation, as well as City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new facility must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

E. Engineer inspection. Any information of an engineering nature that is submitted by the WCF Applicant, whether civil, mechanical, structural, or electrical, shall be certified by a licensed professional engineer.

F. Eligible Facilities Requests. WCF Applicants proposing a modification to an existing WCF that constitutes an Eligible Facilities Request shall be required only to obtain a building

permit from the City Code Enforcement Officer. In order to be considered for such permit, the WCF Applicant must submit a permit application to the City Building Code Official in accordance with applicable permit policies and procedures. Such permit application shall clearly state that the proposed modification constitutes an Eligible Facilities Request pursuant to the requirements of 47 CFR §1.6100. The permit application shall clearly detail all dimensional changes being made to the WCF and Wireless Support Structure.

G. Wind and ice. All WCFs shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended), or to the industry standard applicable to the structure.

H. Interference. All WCFs shall comply with applicable FCC regulations regarding radiofrequency interference.

I. Signs. All WCFs shall post a sign in a readily visible location clearly identifying the owner of the WCF and the name and phone number of a party to contact in the event of an Emergency. The only other signage permitted on the WCF shall be those required by the FCC or any other federal or state agency. Such signage shall be updated as immediately as is feasible in the event of a change in ownership of the WCF.

J. Radio frequency emissions. No WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended, at any time during the construction or operation of the WCF.

K. Noise. WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and Chapter 317 of the City Code, except in Emergencies requiring the use of a backup generator to maintain functionality of the communications network, where such noise standards may be exceeded on a temporary basis only as permitted by the City.

L. Permit fees. The City may assess appropriate and reasonable permit fees directly related to the City's actual costs in reviewing and processing the application for approval of a WCF. Such permit fees shall be established by the City fee schedule, and may be amended by the City Council.

M. Abandonment; Removal. In the event that use of a WCF is to be discontinued, the owner shall provide written notice to the City Building Code Official of its intent to discontinue use and the date when the use shall be discontinued. A WCF not operated for a period of six (6) months shall be considered abandoned. Discontinued or abandoned WCFs, or portions of WCFs, shall be removed as follows:

1. All abandoned or unused WCFs and Accessory Equipment shall be removed within ninety (90) days of the cessation of operations at the site or receipt of notice that the WCF has been deemed abandoned by the City, unless a time extension is approved by the City.

2. If the WCF or Accessory Equipment is not removed within ninety (90) days of the cessation of operations at a site, or within any longer period approved by the City, the WCF and/or Accessory Equipment may be removed by the City and the cost of removal assessed against the owner of the WCF regardless of the owner's or operator's intent to operate the WCF in the future.

3. Where there are two or more users of a single WCF, the WCF shall not be deemed abandoned until all users have terminated use of the WCF for a period of six (6) months.

N. Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

1. All WCFs shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or Emergency repair.

2. Regular maintenance shall be performed as is necessary to ensure the upkeep of the WCF in order to protect the safety and security of the City's residents.

O. Inspection. The City and/or its designee reserves the right to inspect any WCF at any time in order to ensure compliance with the provisions of this section and any other provisions found within the City Code or state or federal law.

P. Timeframes for Review.

1. Upon receipt of an application for a Small WCF, the City Building Code Official shall review the application for completeness. Within ten (10) business days of receiving an application, the City Building Code Official shall notify the WCF Applicant in writing whether the application is incomplete. Any such notice shall specifically identify the information that was determined to be missing from the application by the City Code Enforcement Officer.

2. Subject to applicable tolling procedures as established by federal and state law, the City Building Code Official shall issue a final decision on any application for a Collocated Small WCF within sixty (60) days of submission of any such application.

3. Subject to applicable tolling procedures as established by federal and state law, the City Building Code Official shall issue a final decision on any application for a Small WCF that requires the installation of a new or replacement Wireless Support Structure within ninety (90) days of submission of any such application.

Q. Time, Place and Manner. Once approved, the City Building Code Official shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small WCFs in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.

R. Attachment to municipal structures. The City shall allow the Collocation of Small WCFs to structures owned by the City in accordance with the hierarchy detailed in this section. If the WCF Applicant is proposing the Collocation of a Small WCF on a lower priority structure, it shall be a condition to the approval of the application that the WCF Applicant provide evidence that Collocation on a higher priority Support Structure owned by a third-party is not Technically Feasible. In order from most preferable to least preferable, the City's Collocation preferences are as follows.

1. Power poles;

2. Traffic signage poles without traffic signals;

3. Traffic signal poles;

4. Light poles;

5. Decorative poles.

S. Obstruction. Small WCFs and Accessory Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the City.

T. Graffiti. Any graffiti on a Small WCF, including the Wireless Support Structure and any Accessory Equipment, shall be removed at the sole expense of the owner within ten (10) calendar days of notification by the City.

U. Design standards. All Small WCFs in the City shall comply with the requirements of the City *Small Wireless Communications Facility Design Manual*. A copy of such shall be kept on file at the City Department of Administration.

V. Change in Ownership. In the event of a change in ownership of any WCF, the owner of the WCF shall provide a notice of such change in ownership to the City Building Code Official as promptly as is feasible.

W. Obsolete equipment. As part of the construction, modification or replacement of a Small WCF, the WCF Applicant shall remove any obsolete or abandoned equipment from the structure upon which the Small WCF will be attached.

X. Relocation or Removal of Facilities. Within ninety (90) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Small WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the City, consistent with its police powers and applicable law, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

1. The construction, repair, maintenance or installation of any City or other public improvement in the right-of-way;

2. The operations of the City or other governmental entity in the Right-of-Way;

3. Vacation of a street or road or the release of a utility easement; or

4. An emergency that constitutes a clear and immediate danger to the health, welfare, or safety of the public as determined by the City.

Y. Reimbursement for ROW use. In addition to permit fees as described in this chapter, every Small WCF in the ROW is subject to the City's right to fix annually a fair and reasonable compensation to be paid for use and occupancy of the ROW. Such annual fees shall be established by the City fee schedule, and may be amended by the City Council.

Z. Safety. All Facilities shall comply with the applicable requirements of the Americans with Disabilities Act ("ADA"), and every other local, state, and federal law and regulation, as well as City construction and sidewalk clearance standards, city ordinance, and state and federal laws and regulations to provide a clear and safe passage within the rights-of-way. Further, the location of any replacement or new facility must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health, or safety.

SECTION 2. MISCELLANEOUS.

A. Police powers. The City, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen, or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.

B. Previous Ordinances. Any Ordinance, or part of any Ordinance, conflicting with this Ordinance is hereby repealed insofar as the same effects this Ordinance.

C. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

D. Effective Date. This Ordinance shall become effective immediately upon enactment by the Council of the City of Scranton and signature by the Mayor.

SECTION 3. If any section, clause, provision, or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decisions shall not affect any other section, clause, provision, or portion of this Ordinance so long as it remains legally enforceable minus the invalid portion. The City reserves the right to amend this Ordinance of any portion thereof from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.

SECTION 4. This Ordinance shall become effective immediately upon approval.

SECTION 5. All ordinances or resolutions or parts of ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded.

SECTION 6. This Ordinance is enacted by the Council of the City of Scranton under the authority of the Act of the Legislature, April 13, 1971, Act No. 62, known as the "Home Rule Charter and Optional Plans Law", and any other applicable law arising under the laws of the State and Pennsylvania.

Passed by the Council
March 12, 2024
Receiving the Affirmative votes of Council Persons
KING, SCHUSTER, ROTHCHILD, MCANDREW, SMURL
Negative NONE
President

Approved 3/13/2024
Mayor
City Clerk
Certified Copy