

## Sample Ordinance: Small Wireless Facilities

*The law is constantly evolving. This sample ordinance should not be construed as legal advice. Instead of relying solely on this sample ordinance, community leaders are strongly advised to consult with an attorney prior to the adoption of any ordinance language.*

*Additional notes or issues for consideration within the subsections of the model ordinance are intended as commentary or guidance for drafters, not for adoption in a final ordinance. Such notes are bracketed and in all caps.*

*Internal cross references or terms that are locality-specific are highlighted in gray so they can be readily identified and updated when using this sample ordinance.*

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## [JX] SMALL WIRELESS FACILITIES ORDINANCE

### Section 1 Purpose.

Pursuant to the West Virginia Small Wireless Facilities Deployment Act, codified under West Virginia Code Section 31H-1-1 et seq. as amended, this Ordinance establishes nondiscriminatory policies and procedures for the deployment of small wireless facilities. This Ordinance allows for the efficient deployment of small wireless facilities while preserving the integrity, safe usage, and reasonable aesthetic qualities of the [JX]'s rights-of-way and the [JX] as a whole. The [JX] seeks to establish uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated poles to achieve the following:

- (a) Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;
- (b) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (c) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (d) Protect against environmental damage, including damage to trees;
- (e) Preserve the character of historic districts or areas; and
- (f) Facilitate rapid deployment of small cell facilities to provide the benefits of wireless services to the [JX]'s residents and visitors.

### Section 2 Definitions.

The following terms shall have the following definitions, as used in this Ordinance:

- (1) "Agent" means a person who is authorized to act for or in place of an applicant, or someone who is a representative of the applicant.
- (2) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- (3) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.
- (4) "Applicant" means any person who submits an application and is a wireless provider.
- (5) "Application" means a request submitted by an applicant to the [JX] for a permit to collocate small wireless facilities or to approve the installation, modification, or replacement of a utility pole or wireless support structure.
- (6) "Camouflage" or "conceal" or "stealth" means having similar design and coloration features as the surrounding environment, utility pole, or building.
- (7) "[JX]" means the [JX] or the designated office or official.
- (8) "[JX] utility pole" means a utility pole owned or operated by an the [JX] in a public right-of-way.
- (9) "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.
- (10) "Communications facilities" means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.

- (11) “Communications service” means cable service, as defined in 47 U.S.C. § 522(6), as amended; information service, as defined in 47 U.S.C. § 153(24), as amended; telecommunications service, as defined in 47 U.S.C. § 153(53), as amended; mobile service, as defined in 47 U.S.C. § 153(33), as amended; or wireless service other than mobile service.
- (12) “Communications service provider” means any entity that provides communications service.
- (13) “Conceal” or “Concealment” means when an antenna, small wireless facility, decorative pole, utility pole, or related equipment are designed to look like a feature other than a small wireless facility and which has similar design and coloration features as the surrounding environment.
- (14) “Contractor” means a person who contracts to do work for an applicant, including any person sub-contracted to a person contracted to do work for an applicant.
- (15) “Day” means a calendar day. When computing any period of time prescribed by any applicable provision of this Ordinance, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday, or a designated day off, in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or designated day off.
- (16) “Decorative pole” means a[n] [JX] utility pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, specially designed informational or directional signage, or temporary holiday or special event attachments have been placed, or are permitted to be placed, according to nondiscriminatory municipal rules or codes.
- (17) “FCC” means the Federal Communications Commission of the United States.
- (18) “Fee” means a one-time, nonrecurring charge.
- (19) “Historic district” means a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the [JX] by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C.
- (20) “Law” means a federal or state statute, common law, code, rule, regulation, order, or a local ordinance or resolution.
- (21) “Micro wireless facility” means a small wireless facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no longer than eleven (11) inches.
- (22) “Permit” means a written authorization required by the [JX] to perform an action or initiate, continue, or complete a project.
- (23) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the [JX].
- (24) “Rate” means a recurring charge.

- (25) “Right-of-way” means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway.
- (26) “Small wireless facility” means a wireless facility that meets both of the following qualifications:
- (A) Each antenna does not exceed six (6) cubic feet; and
  - (B) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services.
- (27) “Utility pole” means a pole or similar structure that is or may be used, in whole or in part, by a communication services provider or for electric distribution, lighting, traffic control, signage (if the pole is fifteen (15) feet or taller), or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does not include wireless support structures or electric transmission structures.
- (28) “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:
- (A) Equipment associated with wireless communications; and
  - (B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

“Wireless facility” includes small wireless facilities. “Wireless facility” does not include the structure or improvements on, under, or within which the equipment is collocated; wireline backhaul facilities; coaxial or fiber-optic cable that is between wireless support structures or utility poles; or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

- (29) “Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless provider.
- (30) “Wireless provider” means a wireless infrastructure provider or a wireless service provider.
- (31) “Wireless services” means any services, using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location, provided to the public using wireless facilities.
- (32) “Wireless service provider” means a person who provides wireless services.
- (33) “Wireless support structure” means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. “Wireless support structure” does not include a utility pole.

- (34) “Wireline backhaul facility” is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

**Section 3 Requirements for Permitted Use Status; Zoning Applicability.**

- (a) A wireless provider may collocate small wireless facilities and install, maintain, modify, and replace the wireless provider’s own utility poles or, with the permission of the owner, a third party’s utility pole, in, along, across, upon, and under the right-of-way in any zone, or outside of the right-of-way on property not zoned exclusively for single-family residential use, as long as the following conditions are met:
- (1) The wireless provider receives all necessary permits as required by this Ordinance;
  - (2) The wireless provider pays all necessary fees and rates as required by this Ordinance;
  - (3) The structures and facilities are installed and maintained so as not to obstruct or hinder the usual travel or public safety on the right-of-way or to obstruct the legal use of the right-of-way by the [JX] or other utilities;
  - (4) Each new or modified utility pole does not exceed the greater of ten (10) feet above the tallest existing utility pole in place as of March 5, 2019, within five hundred (500) feet of the new pole, or fifty (50) feet above ground level;
  - (5) New small wireless facilities may not extend more than ten (10) feet above an existing utility pole in place as of March 5, 2019; or if collocating a new utility pole, above the height permitted for a new utility pole as described in Subsection (a)(4) of this Section.
  - (6) The structures and facilities comply with the reasonable, written design guidelines created by the [JX], as enumerated in Section 4 of this Ordinance;
  - (7) If replacement of decorative poles is necessary to collocate a small wireless facility, such replacement shall reasonably conform to the design aesthetics of the decorative poles being replaced;
  - (8) If located in a historic district, as defined herein, the structures and facilities follow applicable design and concealment measures to protect the nature of the historic district;
  - (9) The area has not been designated solely for underground communications and electrical lines, provided that:
    - (A) The [JX] required all such lines to be placed underground by a date certain that is at least three (3) months prior to submission of the permit application;
    - (B) The utility poles that the [JX] allows to remain shall be made available for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities;
    - (C) A wireless provider may install a new utility pole in the designated area when unable to provide wireless service by collocating on a remaining structure; and
    - (D) If the small wireless facilities are installed before the [JX] adopts requirements that communications and electric lines be placed underground, the wireless provider may:
      - (i) Maintain the small wireless facilities in place, subject to any applicable

- pole attachment agreement with the utility pole owner; or
- (ii) Replace the associated utility pole within fifty (50) feet of the prior location, subject to the permission of the utility pole owner; and
- (10) The structures and facilities are compliant with any other applicable local ordinance or state or federal law.
- (b) Any wireless facility or utility pole that does not meet the above requirements is not a permitted use.

**Section 4 Design Guidelines.**

- (a) Unless such guidelines prevent a wireless provider from serving a location in the [JX]’s jurisdiction, the following design guidelines shall apply to all small wireless facilities in the rights-of-way within the [JX]’s jurisdiction:
  - (1) Small wireless facilities shall not obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of such right-of-way by utilities or authorities.
  - (2) Small wireless facilities shall not obstruct the safe operation of traffic control equipment or streetlights.
  - (3) Small wireless facilities shall not interfere with driver or pedestrian sight lines or clear zones for transportation or pedestrians.
  - (4) Small wireless facilities shall comply with all applicable federal and state standards regarding pedestrian access and movement.
  - (5) Small wireless facilities shall comply with generally applicable health and safety codes.
  - (6) Small wireless facilities shall be constructed in a manner to minimize physical damage to private property.
  - (7) Small wireless facilities shall be located in alleys to the greatest extent feasible as determined by the [JX].
  - (8) Small wireless facilities that are pole-mounted on decorative poles shall use concealed, camouflage, or stealth-style antennas in which all equipment is contained within the pole to which the antenna is mounted. The pole and antenna shall be painted to match the poles in the area or another color approved by the [JX].
  - (9) Small wireless facilities that are building-mounted shall use concealed, camouflage, or stealth-style antennas to blend into the structure seamlessly by using one or more of the following methods and approved by the [JX]:
    - (A) Completely enclosed inside of a box that mimics the materials or aesthetics of the building to which the small wireless facility is mounted;
    - (B) Completely concealed inside an existing portion of a building such as the cupola or screening for mechanical equipment; or
    - (C) Completely concealed behind a parapet or other barrier so as to not be visible from any point at ground level on the right-of-way; and
  - (10) Small wireless facilities shall not be used to display a sign.
- (b) Unless such guidelines prevent a wireless provider from serving a location in the [JX]’s jurisdiction, the following design guidelines shall apply to all antennas associated with small wireless facilities within the [JX]’s jurisdiction:

- (1) An antenna shall be no more than three (3) cubic feet in volume.
  - (2) When mounted at the top of a utility pole, the antenna shall be aligned with the centerline of the utility pole and enclosed in a cylindrical shroud.
  - (3) When mounted at the top of a utility pole, a pole-top extension antenna shall be no taller than necessary for separation from other attachments.
  - (4) When mounted on or within a decorative pole, the antenna shall conform to the design aesthetics of that pole, including the design, style, and color.
  - (5) When mounted on another structure, the antenna shall not impair the function of the structure.
- (c) Unless such guidelines prevent a wireless provider from serving a location in the [JX]'s jurisdiction, the following design guidelines shall apply to all wireless equipment associated with antennas within the [JX]'s jurisdiction:
- (1) Where feasible, the wireless equipment shall be located inside of the utility pole on which the antenna is mounted.
  - (2) Where infeasible to locate the wireless equipment inside the utility pole, the wireless equipment shall be located in a ground-mounted cabinet and shall conform to the design aesthetics of the pole, including the design, style, and color or a design otherwise approved by the [JX]. The ground-mounted cabinet shall be located within the same width of space parallel to the right-of-way boundaries as the pole on which the antenna is mounted. The ground-mounted cabinet shall not exceed thirty-six (36) inches in height.
  - (3) When located in alleys or non-improved rights-of-way, wireless equipment may be mounted on a utility pole, provided the wireless equipment is not located beyond the top of the utility pole. If a wireless provider chooses to mount the equipment on a utility pole in an alley or non-improved right-of-way, the equipment shall be flush-mounted and shall provide a minimum clearance of eight (8) feet above all streets, driveways, and sidewalks.
- (d) Unless such guidelines prevent a wireless provider from serving a location in the [JX]'s jurisdiction, all replacement utility poles within the [JX]'s jurisdiction shall be:
- (1) Installed within three (3) feet of the location of the original pole; and
  - (2) Of a material and dimensions that matches existing adjacent poles or consistent with any published local standards for utility pole placements.
- (e) Unless such guidelines prevent a wireless provider from serving a location in the [JX]'s jurisdiction, all new utility poles within the [JX]'s jurisdiction shall:
- (1) Be aligned with the predominate pattern of existing poles where present, or with street trees along the same side of the right-of-way;
  - (2) Not be located directly in front of storefront windows, primary walkways, primary windows, or primary ingress/egress points to buildings;
  - (3) Be sited outside the critical root zone of existing street trees;
  - (4) Not impede vehicular or pedestrian traffic;
  - (5) Not be located where sidewalks are narrow;
  - (6) Not block any emergency service providers or emergency service access, including access to fire hydrants;

- (7) Not be located upon any street or part of a street from which utility poles have been ordered removed by the [JX];
  - (8) Not be located on any street or side of a street where there is already an excess of poles; and
  - (9) Be spaced no closer than [X] feet apart.
- (f) Unless such guidelines prevent a wireless provider from serving a location in the [JX]'s jurisdiction, all cables and wires associated with small wireless facilities within the [JX]'s jurisdiction shall:
- (1) Be installed within the utility pole; or
  - (2) Be flush-mounted to the utility pole, and encased in cover or conduit, where internal installation is not feasible.
- (g) If an electric meter is required, the electric meter shall be mounted in close proximity to the small wireless facility and have similar design characteristics.

**Section 5 Permit Application Requirements.**

- (a) Every wireless provider who wishes to collocate a small wireless facility or install or replace a utility pole in or outside of the right-of-way or modify an existing small wireless facility or utility pole in or outside the right-of-way must obtain a permit from the [JX] under this Ordinance. [CONSIDER ADDING A CROSS-REFERENCE TO ANY OTHER PERMITS THAT MAY BE REQUIRED, SUCH AS A STREET OPENING PERMIT, ELECTRICAL PERMIT, ETC.]
- (b) A wireless provider's permit application shall include the following:
- (1) The applicant's name, address, phone number, email address, and a list of all duly authorized agents acting on behalf of the applicant.
  - (2) A general description of the proposed small wireless facility and associated pole, if applicable.
  - (3) Construction and engineering drawings and information demonstrating compliance with state law and this Ordinance, including a structural analysis of the pole where the applicant proposes to install the small wireless facility.
  - (4) An attestation that the small wireless facilities will be operational for use by a wireless provider within one (1) year after the permit issuance date, unless the [JX] and the applicant agree to extend the period or delay is caused by lack of commercial power or communications transport facilities to the site.
  - (5) An attestation that the small wireless facility will comply with FCC regulations concerning (i) radiofrequency emissions from radio transmitters and (ii) unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. § 22.970 through 47 C.F.R. § 22.973 and 47 C.F.R. § 90.672 through 47 C.F.R. § 90.675.
  - (6) Proof that the applicant maintains property insurance for its property's replacement cost against all risks, workers' compensation insurance as required by law, and commercial general liability insurance with respect to its activities on the [JX] improvements or rights-of-way of not less than one million dollars (\$1,000,000) of coverage for damages, including bodily injury and property damage. The commercial



- general liability policy shall include the [JX] as an additional insured party, and the wireless provider shall provide certification and documentation of such; except that if a wireless provider chooses to self-insure, the wireless provider does not have to name the [JX] as an additional insured party, but shall provide to the [JX] evidence sufficient to demonstrate its financial ability to self-insure the same coverage and limits required herein.
- (7) An attestation that the applicant will provide a bond, escrow deposit, letter of credit, or other financial surety in an amount required by the [JX] to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or the [JX] property caused by the applicant or its agents, as set by the [JX], prior to beginning any installation.
  - (8) The appropriate fees, as further explained in Subsection (d) of this Section.
  - (9) An attestation that the applicant will notify the [JX] and call the West Virginia 811 “Call Before You Dig” Hotline in order to locate all underground utilities at least seventy-two (72) hours before making any excavation.
- (c) A wireless provider that seeks to use a[n] [JX] utility pole shall provide the following additional information in its permit application:
- (1) The additional wind load that the wireless facility adds to the pole.
  - (2) A description of how the wireless provider will provide power to the small wireless facility.
  - (3) A description of how the small wireless facility would attach to the pole, including whether it would involve drilling holes into the pole or attaching bands to the pole.
  - (4) Whether there will be additional wire in the pole.
  - (5) An attestation that the small wireless facility will meet all clearance requirements if it is over the roadway.
  - (6) An attestation that the small wireless facility will not interfere with any other equipment signals on [JX] utility poles.
- (d) *Fees.* A wireless provider’s permit application shall be accompanied with the following fees:
- (1) Two hundred dollars (\$200) for the collocation of each small wireless facility on an existing utility pole for the first five (5) poles in the same application, followed by one hundred dollars (\$100) for each small wireless facility thereafter in the same application.
  - (2) Two hundred and fifty dollars (\$250) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is a permitted use.
  - (3) One thousand dollars (\$1,000) for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use.
- (e) *Exemptions.* The [JX] shall not require an additional application, approval, or permit, or require any fees or other charges from a wireless provider authorized to occupy the right-of-way, for the following:
- (1) Routine maintenance;
  - (2) The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller; or

- (3) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on existing cables that are strung between existing utility poles in compliance with applicable safety codes and the pole owner's construction standards and engineering practices.

**Section 6 Permit Application Processing.**

[THE PROCESSING TIMELINES OR "SHOT CLOCKS" IN THIS SECTION ARE CONTROLLED BY STATUTE AND SHOULD NOT BE ALTERED.]

- (a) All permit applications filed pursuant to this Ordinance shall be reviewed for completeness by the [JX]. The [JX] shall notify the applicant via certified mail whether the application is complete within ten (10) days of receiving the application.
- (b) If the application is incomplete, the [JX] shall notify the applicant, in writing, what specific information is missing from the application. All deadlines required by this Section are tolled from the time the [JX] sends the written notice of incompleteness to the time the [JX] receives the missing information from the applicant.
- (c) A complete application for collocation of a small wireless facility shall be processed within sixty (60) days of the receipt of the complete application.
- (d) A complete application for the installation, modification, or replacement of a utility pole in the right-of-way shall be processed within ninety (90) days of the receipt of the complete application.
- (e) Within sixty (60) days of receiving a complete application for use of a[n] [JX] utility pole, the [JX] shall provide a good faith estimate of any make-ready work necessary to enable the pole to support the requested collocation. If the applicant accepts the good faith estimate, the make-ready work shall be completed by the applicant within sixty (60) days of acceptance. Requirements for make-ready work are as follows:
  - (1) The [JX] may require replacement of the [JX] utility pole only if it demonstrates that the collocation would make the [JX] utility pole structurally unsound;
  - (2) The person owning, managing, or controlling the [JX] utility pole may not require more make-ready work than is required to meet applicable codes or industry standards;
  - (3) Fees for make-ready work may not include costs related to preexisting or prior damage or noncompliance; and
  - (4) Fees for make-ready work, including any pole replacement, may not exceed the actual costs or the amount charged to other communications service providers for similar work and may not include any consultant fee or expense.
- (f) Processing deadlines may also be tolled by agreement of the applicant and the [JX].
- (g) The [JX] may deny the application if the application:
  - (1) Materially interferes with the safe operation of traffic control equipment;
  - (2) Materially interferes with sight lines or clear zones for transportation or pedestrians;
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
  - (4) Fails to comply with the reasonable and nondiscriminatory spacing requirements of general application adopted by the [JX] that concern the location of ground-mounted equipment and utility poles, as specified in Section 4 of this Ordinance;

- (5) Fails to comply with the reasonable and nondiscriminatory rules approved by the [JX] in Section 11 of this Ordinance;
  - (6) Fails to comply with the design guidelines in Section 4 of this Ordinance; or
  - (7) Fails to attest that a small wireless facility will comply with relevant FCC regulations.
- (h) If the [JX] denies the application, it shall document the basis for the denial, including the specific provision on which the denial was based, and send the documentation to the applicant on or before the day the [JX] denies the application. The applicant may cure the deficiencies identified within thirty (30) days without paying an additional application fee. If the applicant cures after thirty (30) days, the applicant shall pay an additional application fee in order for the revised application to be considered. The [JX] shall have thirty (30) days to approve or deny the revised application.
- (i) The installation or collocation shall be completed within one (1) year after the permit issuance date unless the [JX] and the applicant agree to extend the period or a delay is caused by the lack of commercial power or communications facilities at the site.
- (j) Upon approval of the application and posting of the reasonable bond, escrow deposit, letter of credit, or other financial surety required by the [JX] to ensure removal of abandoned or unused wireless facility or damage to the right-of-way or [JX] property, the applicant may undertake the installation or collocation and operate and maintain the small wireless facilities and associated utility poles.
- (k) An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities located within the [JX]'s jurisdiction. The denial of one (1) or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch.
- (l) Permits issued under this Ordinance authorize the applicant to operate and maintain the small wireless facilities and any associated utility poles that are covered by the permit for a period of ten (10) years.

**Section 7 Revocation of Permit.**

The [JX] may revoke an applicant's permit at any time if the conditions of the permit required pursuant to Chapter 31H of the West Virginia Code are no longer being satisfied.

**Section 8 Rates.**

- (a) If an applicant's wireless facilities are located in a right-of-way, the applicant shall pay a rate of twenty-five dollars (\$25) per year, per small wireless facility for occupancy and use of the right-of-way.
- (b) If an applicant collocates its wireless facilities on a[n] [JX] utility pole, the applicant shall pay a rate of sixty-five dollars (\$65) per year, per [JX] utility pole for the occupancy and use of the [JX] utility pole.

**Section 9 Public Right-of-Way Requirements.**

- (a) The [JX] may prohibit or restrict the applicant from working within a right-of-way when a road is closed, or its access is limited to the public.

- (b) The applicant shall employ due care during the installation, maintenance, or any other work in the right-of-way, and shall comply with all safety and right-of-way protection requirements of applicable laws, codes, guidelines, standards, and practices, and any additional commonly accepted safety and public right-of-way protection standards, methods, and devices to the extent consistent with applicable laws.
- (c) Unless otherwise specified in the permit, the applicant shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs, and lights to protect, warn, and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The applicant shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the [JX].
- (d) The applicant shall not interfere with any existing facilities or structures in the right-of-way, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any right-of-way.
- (e) If the [JX] determines that a small wireless facility or utility pole violates the building code or otherwise creates a danger to the public's health, safety, and welfare, the [JX] shall follow the processes and procedures laid out in the West Virginia State Building Code. [REMOVE IF THE WEST VIRGINIA STATE BUILDING CODE HAS NOT BEEN ADOPTED.]
- (f) Any damage to the right-of-way directly caused by an applicant's activities in the right-of-way shall be repaired in order to return the right-of-way to its functional equivalence before the damage. After the applicant receives written notice, the [JX] may assess a fine of one hundred dollars (\$100) per day until the repairs are completed. If the applicant fails to make the repairs required by the [JX] within a reasonable time after written notice, the [JX] may complete the repairs and charge the applicant for the reasonable, documented cost of the repairs in addition to the one hundred dollar (\$100) daily fine.

**Section 10 Additional the [JX] Rules.**

- (a) The [JX] is authorized to create reasonable rules for construction and public safety in the rights-of-way, including wiring and cabling requirements, grounding requirements, and abandonment and removal provisions, to the extent any additional rules are necessary.
- (b) These rules shall be applied in a nondiscriminatory manner and shall be posted publicly [INSERT LANGUAGE STATING WHERE THESE RULES WILL BE POSTED. FOR EXAMPLE, "on the [JX]'s web page."] If the [JX] determines that no additional rules are necessary, the web page [OR OTHER POSTING MEDIUM] shall state that no additional rules apply. The [JX] may change the guidelines in a prospective manner for all permit applications moving forward but shall not change requirements on any applicant who has already applied for a permit. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with the [JX] current rules for construction and public safety as of the time of the permit application.

**Section 11 Indemnification.**

Any wireless provider who owns or operates small wireless facilities or utility poles in the right-

of-way shall indemnify, protect, defend, and hold the [JX] and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims; lawsuits; judgments; costs; liens; losses; expenses; fees to include reasonable attorney fees and costs of defense; proceedings; actions; demands; causes of action; liability and suits of any kind and nature, including personal or bodily injury or death; or property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent; officer; director; representative; employee; affiliate; contractor, or subcontractor of the wireless provider; or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in rights-of-way.

**Section 12 Severability.**

If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Ordinance, which shall remain in full force and effect.

**Section 13 Effective Date.**

This Ordinance shall be effective from the date of adoption.