

ORDINANCE No. _____

AN ORDINANCE OF THE CITY OF MOUNTAIN PARK, GEORGIA, PROVIDING THAT THE CITY’S CODE OF ORDINANCES BE AMENDED TO ADD AN ARTICLE IV TO CHAPTER 18, TO PROVIDE REGULATIONS AND GUIDELINES FOR ESTABLISHING, INSTALLING, AND MAINTAINING SMALL WIRELESS FACILITIES AND ANTENNAS IN THE PUBLIC RIGHTS OF WAY; AND FOR OTHER PURPOSES.

WHEREAS, the Mayor and City Council wish to adopt regulations and guidelines for establishing, installing, and maintaining small wireless facilities when they are proposed to be located in the public rights of way of The City of Mountain Park; and

WHEREAS, the General Assembly of the State of Georgia has provided that Georgia municipalities may regulate such facilities in the public rights of way pursuant to certain standards;

THEREFORE BE IT ORDAINED, AND IT HEREBY IS ORDAINED, by virtue of the authority vested in the Mayor and City Council of The City of Mountain Park, Georgia, as follows:

SECTION ONE- STREAMING WIRELESS FACILITIES AND ANTENNAS ORDINANCE

There shall be a new Streaming Wireless Facilities and Antennas Ordinance which shall be codified as Article IV of Chapter 18 - Communications of the Code of Ordinances for The City of Mountain Park which shall providing for the regulation of small wireless facilities in the public rights of way, and said Article shall read as follows:

ARTICLE IV.- STREAMING WIRELESS FACILITIES AND ANTENNAS ACT

Sec. 18-110. Purposes

- (a) O.C.G.A. § 32-4-92(a)(10) authorizes The City of Mountain Park, Georgia (the “City”) to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act., O.C.G.A. Title 36, Chapter 66C (the “SWFAA”), addresses the placement of small wireless facilities in the public rights of way of the City.
- (b) The Mayor and City Council find that it is in the best interest of the City and its residents and businesses to establish requirements, specifications, and reasonable conditions regarding placement of small wireless facilities and poles in the public rights of way. These requirements, specifications, and conditions are adopted in order to protect the

public health, safety, and welfare of the residents and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

- (c) The objective of this Ordinance is to (i) implement the SWFAA and (ii) ensure use of the public rights of way is consistent with the design, appearance and other features of nearby land uses, protect the integrity of historic, cultural and scenic resources, and not harm residents' quality of life.

Sec. 18-111. Definitions

As used in this Ordinance, the following terms have the following meanings:

- (a) "Antenna" means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves. Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- (b) "Applicable Codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the State of Georgia or the City or are otherwise applicable in the City.
- (c) "Applicant" means any person that submits an application.
- (d) "Application" means a written request submitted by an applicant to the City for a permit to: (i) collocate a small wireless facility in a right of way; or (ii) install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be located.
- (e) "Authority" means The City of Mountain Park.
- (f) "Authority Pole" means a pole owned, managed, or operated by or on behalf of the City. Such term shall not include poles, support structures, electric transmission structures, or equipment of any type owned by an electric supplier.
- (g) "Collocate" or "Collocation" means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.
- (h) "Communications Facility" means the set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.
- (i) "Communications Service Provider" means a provider of communications services.

- (j) “Communications Services” means cable service as defined in 47 U.S.C. § 522(6); telecommunications service as defined in 47 U.S.C. § 153(53); information service as defined in 47 U.S.C. § 153(24), as each such term existed on January 1, 2019; or wireless services.
- (k) “Consolidated Application” means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.
- (l) “Decorative Pole” means an authority pole that is specially designed and placed for aesthetic purposes.
- (m) “Electric Supplier” means any electric light and power company subject to regulation by the Georgia Public Service Commission, any electric membership corporation furnishing retail service in this state, and any municipality which furnishes such service within this state.
- (n) “Eligible Facilities Request” means an eligible facilities request as set forth in 47 C.F.R. § 1.40001(b)(3), as it existed on January 1, 2019.
- (o) “FCC” means the Federal Communications Commission of the United States.
- (p) “Fee” means a one-time, nonrecurring charge based on time and expense.
- (q) “Historic District” means: (i) any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1; (ii) any area designated as an historic district under Article 2 of Chapter 10 of Title 44, the Georgia Historic Preservation Act; or (iii) any area designated as a historic district or property by law prior to April 26, 2019.
- (r) “Law” means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.
- (s) “Micro Wireless Facility” means a small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.
- (t) “Permit” means a written authorization, in electronic or hard copy format, required to be issued by the City to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.
- (u) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

- (v) “Pole” means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.
- (w) “Rate” means a recurring charge.
- (x) “Reconditioning Work” means the activities associated with substantially painting, reconditioning, improving, or repairing authority poles.
- (y) “Replace,” “Replacement” or “Replacing” means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. § 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.
- (z) “Replacement Work” means the activities associated with replacing an authority pole.
- (aa) “Right of Way” means, generally, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road; provided, however, that such term shall apply only to property or an interest therein that is under the ownership or control of the City and shall not include property or any interest therein acquired for or devoted to an interstate highway or the public rights, structures, sidewalks, facilities, and appurtenances of buildings for public equipment and personnel used for or engaged in administration, construction, or maintenance of public roads or research pertaining thereto or scenic easements and easements of light, air, view and access.
- (bb) “Small Wireless Facility” means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters; concealment elements; telecommunications demarcation boxes; grounding equipment; power transfer switches; cut-off switches; and vertical cable runs for connection of power and other services. Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small

wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

- (cc) “State” means the State of Georgia.
- (dd) “Support Structure” means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.
- (ee) “Wireless Infrastructure Provider” means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.
- (ff) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.
- (gg) “Wireless Services” means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.
- (hh) “Wireless Services Provider” means a person that provides wireless services.
- (ii) “Wireline Backhaul Facility” means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

In the event that any federal or state law containing definitions used in this Ordinance is amended, the definition in the referenced section, as amended, shall control.

Sec. 18-112. Permits & Applications

- (a) A permit is required to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).
 - (1) The collocation can be on or adjacent to a pole, decorative pole, or a support structure. Poles and decorative poles by definition are in the right of way, and support structures may be located outside of the right of way. However, permitting support structures is not part of this process.
- (b) Any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way shall submit an application to The City of Mountain Park City Administrator for a permit. Applications are available from the City Administrator. The application requirements are listed below in Sec. 18-112(d) of this Ordinance. Any material change in

information contained in an application shall be submitted in writing to the City Administrator for The City of Mountain Park within 30 days after the events necessitating the change.

- (c) Each application for a permit shall include the maximum application fees: \$100 per existing pole, \$250 per replacement pole, and \$1,000 per new pole as permitted under O.C.G.A. § 36-66C-5(a)(1), (a)(2) and (a)(3). Such maximum application fees shall automatically increase by 2.5 percent annually on January 1st of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).
 - (1) If the FCC issues an order regarding fees that is overturned or modified, the SWFAA fees are capped at what is determined to be “fair and reasonable.”
- (d) Applications shall be made by the applicable wireless provider or its duly authorized representative and shall contain the following:
 - (1) The applicant’s name, address, telephone number, and email address, including emergency contact information for the applicant;
 - (2) The names addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;
 - (3) A general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;
 - (4) Detailed construction drawings regarding the proposed use of the right of way;
 - (5) To the extent the proposed facility involves collocation on a pole, decorative pole, or support structure, a structural report performed by a duly-licensed engineer evidencing that the pole, decorative pole, or support structure will structurally support the collocation, or that the pole, decorative pole, or support structure may and will be modified to meet structural requirements, in accordance with applicable codes;
 - (6) For any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;
 - (7) Information indicating the horizontal and approximate vertical location, relative to the boundaries of the right of way, of the small wireless facility for which the application is being submitted;
 - (8) If an application is reasonable and does not impose technical limitations or significant additional costs and the pole or replacement decorative pole applied for cannot be collocated on an existing pole or support structure in which the

wireless provider has the right to collocate. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination;

- (9) If the small wireless facility will be collocated on a pole or support structure owned by a third party, other than a City pole or a decorative pole, a certification that the wireless provider has permission from the owner to collocate on the pole or support structure; and
- (10) If the applicant is not a wireless services provider, a certification that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the pole or decorative pole at the requested location.

(e) The City Administrator for The City of Mountain Park shall review applications for permits according to the timelines and using the procedures identified in O.C.G.A. § 36-66C-7 and Sec. 18-112 of this Ordinance for review of applications and O.C.G.A. § 36-66C-13 for consolidated applications.

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(f) Within 20 days of receipt of a written application, the City Administrator in good faith shall:

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- (1) Notify the applicant in writing of the commencement and completion dates of any widening, repair, reconstruction, or relocation of the applicable right of way that is scheduled to commence, or is anticipated in good faith to commence, within 24 months after the application is filed;
- (2) Notify the applicant of any aspect of the application that appears to be grounds for the City's denial of the application pursuant to subsection (o) of this Code section; and
- (3) Determine whether the application is complete and inform the applicant of its determination in writing.

(g) If the City Administrator determines that an application is incomplete, it shall specifically identify to the applicant in writing all missing information within such 20-day period; otherwise the application is deemed complete;

- (1) If the City Administrator identifies missing information to the applicant as provided in this paragraph, the applicant may submit such missing information to the City within 20 days of receipt of notification in writing that the application is incomplete without paying any additional application fee, and any subsequent review of the application for completeness shall be limited to the previously identified missing information;

- (2) If the City Administrator determines that an application remains incomplete, or determines that the applicant has made material changes to the application other than to address the missing information identified by the City, the City Administrator shall notify the applicant of such determination in writing within 10 days of receipt of the resubmission of the written application, and absent an agreement to the contrary between the City and the applicant that is confirmed by email or other writing, such notice shall constitute a denial of the application; and
- (3) If the City Administrator does not provide such written notification to the applicant within this 10-day period, the application shall be deemed complete.
- (h) The City Administrator shall make its final decision to approve or deny the application within 30 days of the written determination that the application is complete or when the application is deemed complete under this Ordinance section, whichever is earlier, for a collocation, and within 70 days of the written determination that the application is complete or when the application is deemed complete under this Ordinance section, whichever is earlier, for the installation, modification, or replacement of a pole or decorative pole.
- (i) A decision to deny an application pursuant to this Ordinance shall be in writing, shall identify all reasons for the denial, and shall identify the provisions of applicable codes or other standards applicable pursuant to this Ordinance. The decision to deny shall be sent contemporaneously and will not end the review period until its decision is delivered to the applicant.
- (j) If the City Administrator fails to act on an application within the applicable review period, the applicant may submit to them a written notice that the time period has lapsed. The notice gives the City Administrator 20 days, after receipt of notice, to render its written decision. If the City does not render a written decision, then the application shall be deemed approved.
- (k) If an area is designated solely for underground or buried facilities of communications and electric service providers, then the service providers must not install poles in a right of way above ground unless the wireless providers seek a waiver of the underground requirement for placement of a new pole to support small wireless facilities consistent with applicable law.
- (l) If the City adopts undergrounding requirements, a wireless provider shall be allowed to maintain in place any previously collocated small wireless facilities subject to any applicable pole attachment agreement or to allow the wireless provider to replace the pole previously collocated at the same location or to propose an alternate location within 50 feet of the prior location, unless the alternate location imposes technical limits or significant additional cost.
- (m) A permit from the City does not grant the applicant a license or authorization to impinge upon the rights of others that may already have an interest in the right of way. The

collocation, installation, modification, or replacement for which a permit is issued shall be completed within six months after issuance:

- (1) An extension shall be granted for up to an additional six months upon written request made to the City before the end of the initial six-month period if a delay results from circumstances beyond the reasonable control of the applicant.

(n) Applications for permits shall be approved except as follows:

- (1) In order to receive a permit to install a pole or replace a decorative pole, the applicant must have determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which: (i) the applicant has the right to collocate subject to reasonable terms and conditions; and (ii) such collocation would not impose technical limitations or significant additional costs. The applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.
- (2) The City Administrator may deny an application for a permit upon any of the conditions identified in O.C.G.A. § 36-66C-7(j) as described Sec. 18-112(o) of this Ordinance.
- (3) For applications for new poles in the public right of way in areas zoned for residential use, the City Administrator may propose an alternate location in the public right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the City Administrator's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

(o) An application for permitted uses as described in O.C.G.A § 36-66C-6 shall be approved unless the requested collocation of a small wireless facility or requested installation, modification, or replacement of a pole or decorative pole:

- (1) Interferes with the operation of traffic control equipment; with sight lines or clear zones for transportation or pedestrians;
- (2) Fails to comply with the federal Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., or similar laws of general applicability regarding pedestrian access or movement;
- (3) Requests that ground-mounted small wireless facility equipment be located more than 7.5 feet in radial circumference from the base of the pole, decorative pole, or support structure to which the small wireless facility antenna would be attached, provided that the City shall not deny the application if a greater distance from the base of the pole, decorative pole, or support structure is necessary to avoid

interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;

- (4) Fails to comply with the maximum limitations for fees set forth in O.C.G.A § 36-66C-6 (h) or the requirements of O.C.G.A § 36-66C-6 (i) regarding exclusive arrangements;
 - (5) If an application to install a pole or decorative pole interferes with the widening, repair, reconstruction, or relocation of a public road or highway by the City or the Department of Transportation that has been advertised for bid and scheduled for completion within six months after the application is filed;
 - (6) If an application to install a pole or decorative pole interferes with a public works construction project governed by Chapter 91 of Title 36 and scheduled for completion within six months after the application is filed;
 - (7) Fails to comply with O.C.G.A § 36-66C-10 regarding historic districts, O.C.G.A § 36-66C-11 regarding alternate locations in right of way, and O.C.G.A § 36-66C-12 regarding decorative pole replacements;
 - (8) Fails to comply with laws of general applicability, that are not inconsistent with O.C.G.A § 36-66C, that address pedestrian and vehicular traffic, safety requirements, or the occupancy or management of the right of way.
- (p) A permit issued under this article shall authorize such person to occupy the public rights of way to: (i) collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the height limitations set forth in O.C.G.A. § 36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. § 36-66C-12; and (ii) install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the height limitations set forth in O.C.G.A. § 36-66C-7(h)(1) and (h)(2).
- (q) Upon the issuance of a permit under this Ordinance, and on each anniversary of such issuance, every person issued a permit shall submit to the City the maximum annual payments permitted under O.C.G.A. § 36-66C-5(a)(4) and (a)(5); provided, however, that if such person removes its small wireless facilities from the public rights of way pursuant to O.C.G.A. § 36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual payment obligations under this section shall cease as of the date of the actual removal. The maximum annual payments shall automatically increase on January 1st of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).
- (r) Any person issued a permit shall pay the fees, regarding make-ready work or generally applicable nondiscriminatory fees as identified in O.C.G.A. § 36-66C-5(a)(6) and (a)(7), as applicable.

- (s) The City may revoke a permit issued pursuant to this article if the wireless provider or its equipment placed in the public right of way under that permit subsequently is not in compliance with any provision of this Ordinance or the Georgia Streamlining Wireless Facilities and Antennas Act. Upon revocation, the City may proceed according to Sec. 18-112(t).
- (t) If a wireless provider occupies the public rights of way without obtaining a permit required by this Sec 18-112 or without complying with the SWFAA, then the City may, at the sole discretion of the City, restore the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider the reasonable, documented cost of the City in doing so, plus a penalty not to exceed \$1,000.00, as authorized under O.C.G.A. § 36-66C-6(b). The City may suspend the ability of the wireless provider to receive any new permits from the City under this Sec. 18-112 until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.
- (u) All accepted applications for permits shall be publically available subject to the limitations identified in O.C.G.A. § 36-66C-6(c), which state that upon a reasonable belief portions of the application may be designated as containing trade secrets.
- (v) An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. § 36-66C-13.
- (w) Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. § 36-66C-7(k)(2), which states that permits issued hereunder shall be completed within six months after issuance. An additional six-month extension shall be granted upon written request, if such written request is made prior to the end of the initial six-month period, if a delay results from circumstances beyond the reasonable control of the applicant.
- (x) Issuance of a permit authorizes the applicant to: (i) undertake the collocation, installation, modification or replacement approved by the permit, and (ii) operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of at least 10 years.
- (y) Permits shall be renewed following the expiration of the minimum 10-year term and upon the terms and conditions identified in O.C.G.A. § 36-66C-7(k)(2)(B) regarding grounds for denial of applications and the widening, repair, reconstruction, or relocation of roads, poles, support structures, or small wireless facilities.
- (z) If an application for a permit seeks to collocate small wireless facilities on City poles in the public rights of way, then the City shall, within 60 days of receipt of the completed application: (i) provide a good faith estimate for any make-ready work necessary to

enable the City pole to support the proposed facility; or (ii) notify the wireless provider that the wireless provider will be required to perform the make-ready work. Any make-ready work performed by the City shall be completed within 90 days of receipt of written acceptance of the good faith estimate by the wireless provider. Such acceptance shall be signified by payment of check or other commercially reasonable and customary means pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(n).

- (aa) All completed applications regarding small cell towers and antennas shall be ruled upon subject to the timing requirements set forth in Sec. 18-112(f)-(h) of this article. All completed applications regarding telecommunications towers and antennas shall be ruled upon subject to the timing requirements set forth in Sec. 18-112(h).

Sec. 18-113. Removal; Relocation; Reconditioning; Replacement; Abandonment

- (a) A person may remove its small wireless facilities from the public rights of way if they give the City a minimum of 30 days written notice prior to removal pursuant to the procedures of O.C.G.A. § 36-66C-5(e).
- (b) If a wireless provider's activity in a right of way creates an imminent risk to public safety, the City may provide written notice to the wireless provider and demand that the wireless provider address such risk. If the wireless provider fails to reasonably address the risk within 24 hours of the written notice, the City may take or cause to be taken action to reasonably address such risk and charge the wireless provider the reasonable documented cost of such actions.
- (c) The City may require a wireless provider to repair all damage to a right of way directly caused by their activities while occupying, installing, repairing, or maintaining small wireless facilities, poles, or support structures, and to restore the right of way to its condition before the damage occurred. If the wireless provider fails to return the right of way, to the extent practicable within 90 days of receipt of written notice from the City, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the wireless provider its reasonable, documented cost of doing so, plus a penalty not to exceed \$500.00.
 - (1) The City may suspend the ability of the wireless provider to receive any new permits from them until the wireless provider has paid the assessed restoration costs and penalty, if any;
 - (2) The City shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.
- (d) In the event of a removal under Sec. 18-113, the right of way shall be, to the extent practicable in the reasonable judgment of the City, restored to its condition prior to the removal. If a person fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the removal within 90 days of

the removal, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the person the City's reasonable, documented cost of removal and restoration, plus a penalty not to exceed \$500.00, as authorized under O.C.G.A. § 36-66C-5(e). The City may suspend the ability of the person to receive any new permits under Sec. 18-112 until the person has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City will not suspend such ability of any person that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

- (e) If, in the reasonable exercise of police powers, the City determines: (i) a pole or support structure unreasonably interferes with the widening, repair, reconstruction, or relocation of a public road or highway, or (ii) relocation of poles, support structures, or small wireless facilities is required as a result of a public project, the wireless provider shall relocate such poles, support structures, or small wireless facilities pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(l). If the wireless provider fails to relocate a pole, support structure or small wireless facility or fails to provide a written good faith estimate of the time needed to relocate the pole, support structure or small wireless facility within the time period prescribed in O.C.G.A. § 36-66C-7(l), the City may take the actions authorized by O.C.G.A. § 36-66C-7(o), in addition to any other powers under applicable law.
- (f) The City shall use reasonable efforts to provide the wireless provider with written notice of reconditioning or replacement work at least 120 days before such work begins. Notice less than 30 days prior to the work beginning shall be prohibited. The City shall recondition and replace City poles consistent with the provisions of O.C.G.A. § 36-66C-7(m) regarding further notice, time limits, costs and payment of costs, removal, and protection of the wireless provider's communications facilities. Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. § 36-66C-7(m).
- (g) A wireless provider must notify the City of its decision to abandon any small wireless facility, support structure or pole in writing no later than 30 days prior to abandonment pursuant to O.C.G.A. § 36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. § 36-66C-7(p) regarding abandonment. If the wireless provider fails to remove the abandoned small wireless facility, support structure, or pole within 90 days after such notice, the City may remove the abandoned small wireless facility, support structure, or pole and recover the actual and reasonable expenses of doing so from the wireless provider. The City may take all actions and exercise all powers authorized under O.C.G.A. § 36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.
- (h) The City shall send any notice or decision required under this ordinance by registered or certified mail, statutory overnight delivery, hand delivery, or email transmission. The decision or notice shall be deemed delivered upon email transmission, deposit into overnight mail or regular mail receptacle with adequate postage paid, or actual receipt if delivered by hand.

- (i) During the installation and maintenance process, right of way applicants shall employ due care with all safety and protection required by generally applicable law.
- (j) A right of way applicant shall not place any small wireless facilities, support structures, poles, or decorative poles where they will unnecessarily interfere with any existing infrastructure, equipment, vehicular or pedestrian traffic patterns, or the rights and convenience of property owner's right of way.

Sec. 18-114. Standards for New, Modified or Replacement Poles

- (a) Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right of way as a permitted use: (i) upon a receipt of a permit under Sec. 18-112; (ii) subject to applicable codes; and (iii) so long as such small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the appropriate provisions of O.C.G.A. § 36-66C-7(h) regarding height and location.
- (b) New, modified, or replacement poles installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level.
- (c) Each new, modified, or replacement pole installed in the right of way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:
 - (i) Fifty feet above ground level; or
 - (ii) Ten feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole.
- (d) New small wireless facilities in the public right of way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.
- (e) New small wireless facilities in the public right of way collocated on a new or replacement pole under Sec. 18-114(b) or Sec. 18-114(c) may not extend above the top of such poles.
- (f) A decorative pole should only be located where an existing pole can be removed and replaced, or at a new location where the City has identified that a streetlight is necessary.
- (g) Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:

- (1) Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure, or placed within shrouds of a size such that the antenna appears to be part of the pole or support structure;
 - (2) Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure, or be designed and placed to minimize visual impacts.
 - (3) Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.
 - (4) Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.
- (h) Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility within a historic district, and may place or replace a pole within a historic district, only upon satisfaction of the following: (i) issuance of a permit under Sec. 18-112 and (ii) compliance with applicable codes.
- (i) Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following: (i) issuance of a permit under Sec. 18-112 and (ii) compliance with applicable codes.

Sec. 18-115. Appeals

Decisions under this Ordinance may be appealed to the The City of Mountain Park Mayor and City Council. Said appeals must be filed within 30 days of a decision from the City Administrator.

Sec. 18-116. Miscellaneous

- (a) A permittee under this Ordinance shall by application for the permit and performance pursuant to the permit in the right of way indemnify and hold the City and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees arising from the permittee's negligence and causing harm resulting in claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

(b) If the City entered an agreement with a wireless provider addressing the subject matter of this chapter prior to the adoption of this ordinance:

- (1) this chapter shall not apply until such agreement expires or is terminated pursuant to its terms with regard to poles, decorative poles, support structures, replacement poles, and small wireless facilities installed pursuant to such agreement prior to October 1, 2019; and
- (2) otherwise, the provisions of this chapter shall apply to poles, decorative poles, support structures, replacement poles, and small wireless facilities installed on or after the adoption of this ordinance.

SECTION TWO- Legal Status Provisions

- (a) Any ordinance in conflict with these regulations is hereby repealed.
- (b) In the event that any section or portion of these amendments is found to be unlawful, invalid, unconstitutional or overbroad, it is the intent of the Mayor and Mayor and City Council that it be severed, and the remaining portions and sections remain in full effect as if they had been adopted independently of the severed language.
- (c) The public welfare demanding, these development regulations shall be effective immediately upon adoption.
- (d) The application referred to in this ordinance shall be in substantially the same form as the application attached hereto as Exhibit A.

Approved this _____ day of _____, 2020.

Jim Still, Mayor

Karen Segars, City Clerk

EXHIBIT A

THE CITY OF MOUNTAIN PARK APPLICATION FOR A PERMIT TO COLLOCATE SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY OR TO INSTALL, MODIFY OR REPLACE A POLE OR DECORATIVE POLE IN THE PUBLIC RIGHT OF WAY FOR COLLOCATION OF A SMALL WIRELESS FACILITY

OVERVIEW

The City of Mountain Park Wireless Facilities and Antennas Ordinance requires any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way to submit an application to the City Administrator for The City of Mountain Park for a permit. This application is required to receive a permit. Any material change to information contained in an application shall be submitted in writing to the City Administrator for The City of Mountain Park within 30 days after the event necessitating the change.

This application **may not** be used:

- For approval to place facilities outside of the public rights of way.
- New, modified, or replacement poles installed in the right of way in a historic district or an area zoned primarily for residential that exceed 50 feet above ground level.
- New, modified, or replacement poles installed in the right of way outside of a historic district or an area zoned primarily for residential that exceed the greater of: (i) 50 feet above ground level and (ii) 10 feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole.
- New small wireless facilities in the public right of way and collocated on an existing pole or support structure that exceed more than 10 feet above the existing pole or support structure.
- New small wireless facilities in the public right of way collocated on a new or replacement pole that extend above the top of such poles.
- Installation, modification or replacement of a support structure.

- Any modification, maintenance, repair, or replacement that is not set forth in subsections (e) and (f) of O.C.G.A. § 36-66C-6 or that is not eligible for administrative review under O.C.G.A. § 36-66C-7.

The following Application and Permit Form is numbered and corresponds with the information required by O.C.G.A. § 36-66C-6(d).

(d)(1): Applicant and

(d)(2): Consultant Name and Contact Information

Applicant	Consultant
Applicant Name: _____ Address: _____ _____	Contractor Name: _____ Address: _____ _____
County: _____	County: _____
State / Zip Code: _____	State / Zip Code: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Contact Person Name: _____	Contact Person Name: _____
Contact Person Number: _____	Contact Person Number: _____
Email Address: _____	Email Address: _____
24 Hour Contact Information:	24 Hour Contact Information:
Name and Title: _____	Name and Title: _____
Phone: _____	Phone: _____
Email: _____	Email: _____

(d)(3) General Description of Work

Work Location in ROW: _____

Describe Scope of Work:

Number of Steel Poles: _____

Number of Wood Poles: _____

Total Linear Footage: _____

Project Start Date: _____

Projected End Date: _____

(d)(4) – Detailed Construction Drawings

**INSERT
DRAWINGS
HERE OR
ATTACH**

**(d)(5) – Structural Report
[Collocation Only]**

**INSERT
REPORT
HERE OR
ATTACH**

**(d)(6) – Visual Depictions or Representations
[Above-Ground, If Not Included in Construction Drawings]**

**INSERT
VISUAL
DEPICTIONS
HERE OR
ATTACH**

(d)(7) – Location of Facilities Relative to the Boundaries of the Rights of Way

**INSERT MAP
HERE OR
ATTACH**

**(d)(8) – Certification that Application Complies with subsection (k) of O.C.G.A. § 36-66C-6(k)
[Installation of Poles or Replacement of Decorative Pole Only]**

Applicant has determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which:

- (1) The wireless provider has the right to collocate subject to reasonable terms and conditions; and
- (2) Such collocation would not impose technical limitations or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

(d)(9) – Certification Regarding Permission to Collocate

[Collocation on a Pole or Support Structure Owned by a Third Party other than an Authority Pole or Decorative Pole]

Applicant permission from _____, the owner of the [pole / support structure] upon which Applicant's small wireless facility will be collocated.

(d)(10) – Certification of Non-Wireless Services Provider
[Applicant is not a Wireless Services Provider]

_____, a wireless services provider, has requested in writing that Applicant collocate the small wireless facilities or install, modify, or replace the pole or decorative pole at the requested location.

Applicant Certification

Applicant agrees to indemnify and hold harmless The City of Mountain Park and all officers, employees or agents of the **City** consistent with the provisions of O.C.G.A. § 36-66C-15.

This permit is requested this _____ day of _____ in the year 20____.

By Signature

By Witness Signature

Printed Name Title

Title/Position

>>>FOR STAFF USE ONLY<<<

DATE RECEIVED: _____

PERMIT #: _____

OF FACILITIES: _____

Permit is hereby: Approved Denied

Reason for Denial:

Permit Fee Calculation

Pursuant to OCGA § 36-66C-5.

- (1) A fee for each application for the **collocation** of each small wireless facility on an existing pole assessed by the authority not to exceed \$100.00 per small wireless facility;
- (2) A fee for each application for each **replacement pole** with an associated small wireless facility assessed by the authority not to exceed \$250.00;
- (3) A fee for each application for each **new pole** with an associated small wireless facility assessed by the authority not to exceed \$1,000.00 per pole with an associated small wireless facility;

Collocation - \$100.00 per small wireless facility

Replacement Pole - \$250.00 per small wireless facility

New Pole - \$1,000.00 per pole with an associated small wireless facility

Permit Granted by: _____ Date: _____