



# City of Cincinnati

801 Plum Street  
Cincinnati, OH 45202

## Agenda - Final-revised

### Major Projects & Smart Government

*Chairperson Greg Landsman  
Councilmember Chris Seelbach  
Councilmember David Mann  
Councilmember Wendell Young  
Councilmember Jan-Michele Kearney*

---

Tuesday, August 3, 2021

2:00 PM

Council Chambers, Room 300

---

## PRESENTATIONS

### Pedestrian Safety & Traffic Calming

John Brazina, Director

### AGENDA

- [202102322](#) **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 6/23/2021, **MODIFYING** the provisions of Title VII, "Business Regulations" of the Cincinnati Municipal Code by **ORDAINING** new Chapter 811, "e-Scooter Rental Franchises," and **AMENDING** Section 1501-9, "Class D Civil Offenses," of Title XV, "Code Compliance and Hearings," of the Cincinnati Municipal Code to establish e-scooter rental franchises for the rental of e-scooters in the City of Cincinnati.  
  
**Attachments:** [Transmittal](#)  
[Ordinance](#)
- [202102323](#) **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 6/23/2021, **MODIFYING** Title VII, "General Regulations," of the Cincinnati Municipal Code by **AMENDING** the provisions of Chapter 719, "Wireless Communications Facilities in the Right of Way," to ensure that the City's regulation of wireless communication facilities in the public right-of-way is consistent with recent changes to applicable state and federal laws and regulations.  
  
**Attachments:** [Transmittal](#)  
[Ordinance](#)
- 202102462** REPORT, dated 8/4/2021, submitted by Paula Boggs Muething, City Manager, regarding 5G Networks Safety and City Ability to Regulate. (See Doc. #202101145)  
  
**Sponsors:** City Manager  
**Attachments:** Council Memo re 5G Wireless Safety - Federal Preemption 8-21

4. [202102490](#) **PRESENTATION** submitted by Paula Boggs Muething, City Manager, dated 8/3/2021, regarding DOTE's Pedestrian Safety & Traffic Calming Process and Priority Projects.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Presentation](#)
5. [202102567](#) **ORDINANCE (EMERGENCY)** submitted by Paula Boggs Muething, City Manager, on 8/2/2021, **MODIFYING** Article XXI, "Department of Buildings and Inspections," of the Administrative Code of the City of Cincinnati by **AMENDING** Section 2, "Duties of Director of Buildings and Inspections," Section 3, "Division of Permits and Inspections," and Section 5, "Division of Property Maintenance Code Enforcement," and by **REPEALING** Section 4, "Urban Conservator"; and **MODIFYING** Article XXV, "Department of City Planning and Engagement," by **AMENDING** Section 2, "Duties of the Director of the Department of City Planning and Engagement," and by **ADDING** new Section 3, "Zoning Administrator," and new Section 4, "Urban Conservator," to transfer the roles of Zoning Administrator and Urban Conservator, and subordinate employees, from the Department of Buildings and Inspections to the Department of City Planning and Engagement, in order to facilitate the oversight and efficient integration of zoning administration and urban conservation responsibilities into the operations of the Department of City Planning and Engagement.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)

ADJOURNMENT

Date: June 23, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

**202102322**

Subject: EMERGENCY ORDINANCE – E-SCOOTERS FRANCHISE REGULATIONS

---

Attached is an emergency ordinance captioned as follows:

MODIFYING the provisions of Title VII, “Business Regulations” of the Cincinnati Municipal Code by ORDAINING new Chapter 811, “e-Scooter Rental Franchises,” and AMENDING Section 1501-9, “Class D Civil Offenses,” of Title XV, “Code Compliance and Hearings,” of the Cincinnati Municipal Code to establish e-scooter rental franchises for the rental of e-scooters in the City of Cincinnati.

The City Administration is working to enhance and codify the use of publicly shared electronic scooters, (e-scooters), in the City of Cincinnati. The recent passage of Ohio House Bill 295 and the subsequent update to Ohio Revised Code Section 4511 allows for e-scooters to operate and park within the City’s right-of-way subject to City regulations and prohibitions.

The reason for the emergency is to create the requisite governance in a timely manner to ensure the safe operation of low-speed micro-mobility devices and e-scooters that are presently operating within the City. The ordinance will establish provisions for awarding e-scooter rental franchises, set franchise fee requirements, and codify management and operations for this new transit sharing system.

cc: John S. Brazina, Director, Transportation and Engineering

EMERGENCY

City of Cincinnati

JRS  
AWB

An Ordinance No. \_\_\_\_\_ - 2021

**MODIFYING** the provisions of Title VII, “Business Regulations” of the Cincinnati Municipal Code by **ORDAINING** new Chapter 811, “e-Scooter Rental Franchises,” and **AMENDING** Section 1501-9, “Class D Civil Offenses,” of Title XV, “Code Compliance and Hearings,” of the Cincinnati Municipal Code to establish e-scooter rental franchises for the rental of e-scooters in the City of Cincinnati.

WHEREAS, the City established a pilot program for shared active transportation in the City, which included agreements with Bird and Lime allowing for the operation of low-speed micromobility devices, otherwise known as electronic scooters or e-scooters (“e-scooters”); and

WHEREAS, the City issued a request for proposals for consideration of a permanent program for the rental of e-scooters in the City, and the Administration reviewed proposals and is in the process of finalizing agreements with those vendors who will be most advantageous to the City; and

WHEREAS, the Ohio General Assembly recently passed House Bill 295, codified in Ohio Revised Code Chapter 4511, allowing for e-scooters to operate and park in the City’s right-of-way subject to regulations and prohibitions established by the City; and

WHEREAS, the City has a significant interest in protecting the safety and welfare of the pedestrian public and preventing City streets and rights of way from being flooded by e-scooters or rented without proper safeguards to account for the public health, safety, and welfare; and

WHEREAS, the establishment of a e-scooter rental franchise program will encourage e-scooter rental companies to regulate their own riders and operators and further provide resources for the repair and maintenance of the City’s roads and rights-of-way where such e-scooters operate; and

WHEREAS, by providing for a limited number of franchises, the City intends to prevent the cluttering of City streets, sidewalks, and other rights-of-way by e-scooter rental companies and provide an effective means to regulate and oversee the regulations of e-scooter rentals; and

WHEREAS, the City Council accordingly wishes to establish regulations for e-scooter scooter rental companies that operate within the City of Cincinnati in order to provide for the safety, security, and welfare of the public and the City’s infrastructure assets; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Title VII, “Business Regulations,” of the Cincinnati Municipal Code is hereby modified by enacting new Chapter 811, “e-Scooter Rental Franchises,” to read as follows:

**CHAPTER 811. e-SCOOTER RENTAL FRANCHISES.**

**Sec. 811-01. – Applicability.**

- (a) e-Scooter shall have the same meaning as defined in Cincinnati Municipal Code Section 501-1-E3, “e-Scooter.”
- (b) This chapter applies to any person engaged in the business of providing e-scooter rental or sharing services to the public within the city.
- (c) The requirements of this chapter shall supplement the provisions of Title V, “Traffic Code,” of the Cincinnati Municipal Code.
- (d) No person shall engage in the business of e-scooter rental or sharing services to the public within the city unless that person has obtained a franchise from the city to engage in such a business.
- (e) No person shall obtain a franchise from the city until that person has complied with the following:
  - (1) Submitted a timely and complete application for a franchise or timely and complete response to a request for proposals conducted by the city;
  - (2) Paid the application fee established by the city manager, if applicable;
  - (3) Posted a bond and obtained the insurance required by Sec. 811-07; and
  - (4) Executed a franchise agreement with the city for the provision of e-scooter rental or sharing services.

**Sec. 811-03. - General Provisions.**

- (a) It is unlawful for any person to commence or engage in the business of providing e-scooter rental or sharing services within the city without first obtaining a franchise and entering into a franchise agreement with the city.
- (b) Each franchisee shall comply with all laws of the city of Cincinnati, the state of Ohio, and the federal government. Each franchisee shall obtain and maintain all applicable licenses and permits required by federal, state, and local laws, rules, regulations, and orders of regulatory bodies.

- (c) Each franchisee shall comply with all rules and regulations established by the city manager or his or her designee for the safe and effective administration, operation, and enforcement of the e-scooter rental and sharing services pursuant to Sec. 811-09.
- (d) A franchisee shall not be relieved of the obligation to comply with all requirements of this chapter and the franchise agreement by failure of the city to enforce compliance with such requirements.
- (e) The city reserves its right to grant franchises and similar rights to more than one (1) person.
- (f) Each franchisee shall identify and mark each of its e-scooters located within the city with the franchisee's name so that they are easily identifiable.
- (g) A franchisee providing e-scooter rental or sharing services is not and shall not be deemed to be an agent or employee of the city. A franchisee shall be solely responsible for any losses or damages of any kind arising from its performance or nonperformance under its franchise. A franchisee shall indemnify, defend, and hold the city harmless against any and all claims and suits brought against the city resulting from the franchisee's performance or nonperformance under the franchise agreement.
- (h) The execution of the franchise agreement and the issuance of a franchise, and the renewal thereof, is at the sole discretion of the city manager and shall not be construed as creating any vested rights in the franchisee. Each franchise is revocable in accordance with the terms of this chapter and the terms of the franchise agreement.
- (i) A franchise may not be assigned or transferred to another person.
- (j) A franchise authorizes a franchisee to provide e-scooter rental or sharing services within the city.
- (k) All of the franchisee's equipment, including e-scooters and other vehicles used in connection with e-scooter rental or sharing services, shall be subject at all times to inspection by the city, and the city manager or his or her designee may require the cleaning, repair, replacement, or retirement of any equipment, including e-scooters and other vehicles used in connection with e-scooter or sharing services.

**Sec. 811-05. – Award of e-Scooter Franchisees.**

- (a) Any person wishing to obtain a franchise to engage in the business of providing e-scooter rental or sharing services within the city shall submit an application to the city manager in compliance with the process established for awarding franchises.

- (b) Where appropriate, the city manager may choose to conduct a request for services pursuant to Cincinnati Municipal Code Section 321-1-R6 to solicit qualified franchisees in lieu of an application process.
- (c) An applicant for a franchise shall provide the city with satisfactory evidence demonstrating that:
- (1) The applicant has the experience, personnel, equipment, and other resources to provide e-scooter rental or sharing services in the city and the management of such; and
  - (2) The applicant has the capacity and willingness to comply with all local, state, and federal laws, and all rules and regulations of the city for the rental, sharing, and operation of rental e-scooters.
- (d) Applicants for a new franchise and applicants for the renewal of an existing franchise shall provide information requested by the city manager and other relevant information. The application and supporting materials shall be submitted under oath. At a minimum, the application shall include the following information:
- (1) The name and mailing address of the applicant; contact information for the applicant's designated representative; the name of the person to be granted the franchise; if the applicant is a corporation, the names of the corporation's principal officers; the names of the local operating managers who will be responsible for the rental or sharing services for the applicant, together with the business address and telephone number of each manager;
  - (2) If the applicant is a corporation, proof that the corporation is in good standing in the state of Ohio and, if the applicant is not an Ohio corporation, proof that the applicant is authorized to do business in the State of Ohio. If the applicant is operating under a fictitious name, the applicant shall be required to submit information that such fictitious name is registered and held by the applicant;
  - (3) A statement of whether the applicant operates or has operated an e-scooter rental or sharing business in Ohio or any other state or territory. If the applicant has provided or is providing e-scooter rental or sharing services, the applicant shall describe all cases where and when it provided such services (but not more than ten (10) communities), and whether any of the applicant's permits, approvals, or licenses to provide such services have ever been revoked or suspended within the last five (5) years;
  - (4) A complete record of all felony convictions, and all misdemeanor convictions within the last five (5) years, involving the applicant's e-scooter rental and sharing services. If the applicant is not an individual, the applicant also shall provide the complete record of such convictions for any person who is an officer, majority shareholder, or partner in the applicant, and any person having a controlling interest in the applicant;

- (5) A complete record of all civil penalties and liquidated damages in excess of five thousand dollars (\$5,000.00) assessed against the applicant by local, state, and federal governmental entities within the last five (5) years involving the e-scooter rentals or sharing services;
  - (6) The types of e-scooters or other vehicles which the applicant has in its inventory and their capabilities, including any e-scooters that are adapted to expand access for people with physical limitations;
  - (7) A list of the e-scooters, vehicles, equipment, and containers that will be used by the applicant to provide e-scooter rental or sharing services. At a minimum, the list shall identify the make, model, and year of each e-scooter or vehicle. The city manager may inspect any of the e-scooters, vehicles, equipment, and containers identified by the applicant and thereby determine whether the applicant possesses the e-scooters, vehicles, equipment, and containers that are capable of providing safe and efficient e-scooter rental and sharing services in compliance with this chapter; and
  - (8) A chart identifying the maximum rates that the applicant charges customers for various types of e-scooter rental or sharing services.
- (e) When applicable, each applicant shall submit a nonrefundable application fee to the city in the amount established by the city manager. The application fee is due and payable when the application is submitted. This fee shall not apply to responses to a request for services.
  - (f) New applications must be submitted to the city manager at least sixty (60) days before the applicant wishes to begin providing e-scooter rental or sharing services. Renewal applications must be submitted to the city manager at least thirty (30) days before the applicant's existing franchise expires.
  - (g) A franchise for e-scooter rental or sharing services may be granted to a person when the city manager concludes that the applicant has satisfied the requirements in this chapter. This includes successfully responding to the request for services or completing the application and the city rating the person's proposal or application as most advantageous.
  - (h) The city manager retains the sole discretion to approve or deny an application. Among others, an application for a franchise for e-scooter rental or sharing services may be denied for the following reasons:
    - (1) The applicant has not submitted a complete application with all of the required supporting documents or paid the application fee;
    - (2) The applicant has submitted false or materially misleading statements in the application;
    - (3) The applicant or a partner, director, or officer of the applicant has been convicted of a felony within the past five (5) years, or has been convicted of a misdemeanor within the past three (3) years, involving provision of scooter rental or sharing services;



- (4) The applicant has failed to satisfy one or more of the requirements of this chapter or the Cincinnati Municipal Code;
- (5) Any reason that would justify the suspension or revocation of a franchise, as described in Sec. 811-11; and
- (6) The addition of further franchises would exceed either the total number of allowable e-scooters in the city or the number of franchises determined by the city manager to be needed by the city.

**Sec. 811-07. - Requirement to Execute a Franchise Agreement with the City; Payment of Franchise Fees.**

- (a) Each applicant awarded a franchise for e-scooter rental or sharing services shall execute a franchise agreement, including all required attachments, in the form prescribed by the city manager or his or her designee.
- (b) In connection with the execution of a franchise agreement, each franchisee shall submit the required franchise fees and documentation to the city, including but not limited to the following:
  - (1) An annual fee of two thousand five hundred dollars (\$2,500) for the administrative costs of oversight of the franchise, which fee shall be due and payable on the commencement date of the franchise and on each anniversary of the commencement date during the term of the franchise agreement.
  - (2) Monthly franchise fees as compensation for the rights and benefits granted by the franchise, including but not limited to the right to operate an e-scooter rental or sharing business in the city. The franchise fee shall be equal to twenty-five cents (\$0.25) per trip or activation of an e-scooter (which shall equal the total number of trips or activations of an e-scooter within a calendar month multiplied by \$0.25) for each e-scooter maintained by the franchisee within the city. A trip shall mean anytime a person activates or uses the e-scooter and pays a fee for such use. The franchisee shall submit its monthly franchise fee payments to the city no later than five business days after the end of each month.
  - (3) A statement of the franchisee's total number of trips in the city that accompanies each monthly franchisee fee payment, which statement shall be submitted on a form prescribed by the city manager or his or her designee. The statement shall include the number of e-scooters deployed or available in the city and the amount of trips and fees per day for each e-scooter. Statements and remittances shall be accepted as timely if postmarked within five days after the end of the month; if the fifth day falls upon a Saturday, Sunday, or federal or state holiday, statements and remittances shall be accepted as timely if postmarked on the next business day. Payments not received by the due date shall be assessed (1) an administrative fee to reimburse the city for the reasonable administrative costs associated with collecting such monies; and (2) interest for each day of delinquency at the rate of eighteen (18) percent per annum or the maximum allowed by law, whichever is less, for each day of delinquency, until

the total unpaid amount due and owing is paid in full. The administrative fee shall be equal to six (6) percent of the amount owed by the franchisee to the city or fifteen dollars (\$15.00), whichever is greater.

- (4) An annual report concerning the franchisee's total trips for the year. This annual report shall be examined by an independent reviewer, who shall confirm that the franchisee's computations concerning trips and franchise fees were performed in accordance with the requirements of this chapter. The report of the reviewer shall state that its examination of the franchisee's records was performed in accordance with professional standards. Each franchisee shall notify the city of the date its fiscal year ends. Each franchisee shall file the auditor's report with the city within one hundred twenty (120) days after the end of the franchisee's fiscal year. Franchisee shall be solely responsible for retaining the independent auditor and paying for his or her services.
- (5) A certificate evidencing insurance coverage for the following types of insurance coverage and specified limits of coverage is in effect for the same term as the franchise agreement, and naming the city as an additional insured (except with regard to the workers compensation and employers liability insurances), issued by an insurance company licensed to do business in the state of Ohio, acceptable to the city, and as required and set forth in greater specificity in the franchise agreement:
  - (a) Comprehensive general liability insurance with a limit of a one million dollar (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate. This policy must include the following coverages: premises and operations liability, independent contractors, products and completed operations, personal injury, contractual liability, and fire damage;
  - (b) Automotive liability insurance coverage providing a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. This policy must include the following coverages: bodily injury and property damage including premises and operations;
  - (c) Workers compensation insurance shall be provided for all of franchisee's employees as required under Ohio law; and
  - (d) Employer's liability insurance providing a single limit of not less than one million dollars (\$1,000,000), bodily injury by each accident, and providing a single limit of not less than one million dollars (\$1,000,000), bodily injury disease per each employee, and providing a single limit of not less than one million dollars (\$1,000,000) bodily injury by disease policy limit.
- (6) A bond in the amount of twenty percent (20%) of the franchisee's gross revenues for the quarter immediately preceding the execution date of the franchise agreement. For franchisees who did not hold a franchise in the quarter immediately preceding the execution date of the franchise agreement, the bond shall be in the amount of fifty thousand dollars (\$50,000). The bond shall conform with the requirements of CMC Chapter 304.

- (a) All amounts paid by the franchisee shall be subject to confirmation and re-computation by the city. An acceptance of payment shall not be construed as an accord that the amount paid is the correct amount, nor shall acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable.
- (b) Billing methods that have the effect of reducing or avoiding the payment of franchise fees are prohibited and will be cause for termination of the franchise. Any person who uses false, misleading, or fraudulent billing methods for the purpose of reducing or avoiding the payment of franchise fees may be subject to the penalties provided by this chapter.
- (c) Payment of the franchise fee shall not exempt the franchisee from the payment of any other fee, tax, or charge on the business, occupation, property, or income of the franchisee that may be imposed by the city, the county, the state, or the federal government.
- (d) The franchisee shall notify the city in writing by registered or certified mail thirty (30) days in advance of any cancellation, intent not to renew, or any other changes in the insurance coverage required by this section. Upon the cancellation or lapse of any policy of insurance required by this chapter or the franchise agreement, the franchisee's license to operate as a franchisee in the city under its franchise agreement shall be deemed to be immediately revoked unless, before the expiration date of the policy of insurance, another policy of insurance containing all the requirements of the original policy of insurance is obtained and a new certificate is provided to the city.
- (e) The bond required by this section shall be used to insure the franchisee's performance under this chapter and the franchise agreement. Among other things, the bond shall be used to ensure the franchisee's payment of franchise fees and other sums that are due and owing to the city. The bond shall also be used to indemnify the city from any damages that may be suffered by the city in any manner as a result of the city's award of a franchise to the applicant, including but not limited to damages resulting from the franchisee's performance or nonperformance of the conditions and requirements of the franchise agreement, the franchisee's use of the city's streets, the failure of the franchisee to conform with applicable laws, and any negligent, reckless or intentional wrongful act or omission of the franchisee or the franchisee's employees, agents, officers, or representatives. The bond shall be kept in full force at all times during the term of the franchise. The bond shall be released by the city within one year following the expiration or termination of the franchise agreement.
- (f) A franchisee's failure to remit fees and documentation required by this chapter shall be grounds for the suspension or revocation of the franchise.
- (g) The city may seek judicial relief to recover all fees, costs, and interest due and owing by a franchisee. The franchisee shall pay the city's court costs, reasonable attorney fees, accounting and auditing costs, and other collection costs incurred by the city as a result of franchisee's failure to remit the fees and documentation required by this chapter and the franchise agreement.

**Sec. 811-09. – Rules and Regulations for Franchisee Operations.**

- (a) The city manager or his or her designee is authorized to establish rules and regulations for the safe and effective administration, operation, and enforcement of the e-scooter rental and sharing services program. The regulations may include but are not limited to the following categories:
- (1) Required notices and information to be provided to e-scooter renters and users;
  - (2) Required management and enforcement tools so the city and franchisees may effectively control, monitor, and manage rented e-scooters;
  - (3) Required maintenance obligations and abatement obligations regarding retrieval of e-scooters which are determined by the city to be in disrepair, in need of service, or located outside of permissible areas of operation;
  - (4) Identification requirements to ensure rented e-scooters are identifiable and ensure the payment of fees and costs associated with such rentals;
  - (5) Restrictions on parking in the city right-of-way;
  - (6) Environmental concerns and regulations based on the weather;
  - (7) Rider education and public health concerns regarding safety;
  - (8) Restrictions on fleet size or the number of shared or rentable e-scooters owned or operated by a franchisee;
  - (9) Allowances for accessibility e-scooters or similar devices which are intended to allow those persons with physical limitations access to similar rentable devices;
  - (10) Curfew restrictions and boundaries for permanent and temporary restricted areas of operation; and
  - (11) All regulations necessary for the safe and effective management and control of e-scooters in the city's streets, paths, roads, rights-of-way, and other public grounds.
- (b) The rules and regulations established pursuant to this section shall promote the safe and orderly operation of e-scooters within the city, and shall promote the safety and welfare of pedestrians, residents, businesses, city staff, and right-of-way users. All e-scooter rental franchises shall agree to abide by such rules and regulations.
- (c) Each franchisee shall prepare, keep, and maintain current, accurate records demonstrating its compliance with the requirements of this chapter and the franchise agreement.

- (d) The city shall have the right to inspect and review a franchisee's records concerning its franchise. The city shall provide fifteen (15) days advance written notice of any such inspection. The city also may copy and audit the franchisee's records, at the city's expense. The records shall be readily accessible for review by the city.

**Sec. 811-11. - Suspension or Revocation of Franchise.**

- (a) The city manager may suspend or revoke a franchise and the corresponding franchise agreement if the city manager concludes that:
- (1) The franchise was issued due to a mistake of law or fact;
  - (2) The franchise was issued based upon a false statement or misrepresentation by the franchisee;
  - (3) The franchisee has violated an applicable provision of the Cincinnati Municipal Code, state law, or federal law;
  - (4) A necessary permit, approval, or license of the franchisee has become invalid;
  - (5) The franchisee is no longer engaged in providing e-scooter rental or sharing services in the city;
  - (6) The services and other activities authorized under the franchise are not being performed in accordance with the requirements of this chapter, the franchise agreement, or the application for a franchise;
  - (7) Timely and full payment of the franchise fee has not been accomplished by the franchisee in compliance with this chapter;
  - (8) The franchisee or one (1) of its principals has been convicted under a local, state, or federal law for a crime involving scooter rental or sharing services;
  - (9) The franchisee failed to provide, pay for, and maintain the coverage in accordance with the requirements of this chapter;
  - (10) The franchisee violated a requirement of this chapter or the franchise agreement;
  - (11) The franchisee failed to comply with a lawful order of the city manager or his or her designee; or
  - (12) The franchisee's actions or inactions demonstrate that the franchisee is not competent or fit to provide services to the public.

- (b) Before the city manager suspends or revokes a franchise, the city manager or his or her designee shall provide notice to the franchisee and an opportunity to be heard in the manner set forth in Sec. 811-13.
- (c) A franchise that has been suspended or revoked under this chapter shall not be reinstated or reissued unless, at a minimum, the franchisee has complied with all of the requirements of this chapter, submitted a complete application, paid the application fee, executed a franchise agreement, and been approved by the city manager.
- (d) The revocation of a franchise shall automatically terminate the corresponding franchise agreement.

**Sec. 811-13. - Right to Appeal the Denial, Suspension, or Revocation of a Franchise.**

- (a) Prior to the denial of an application or the suspension or revocation of a franchise, the applicant or franchisee shall be given reasonable notice of the city manager’s proposed action and shall be given an opportunity to present evidence to the city manager or his or her designee explaining why the franchise should not be denied, suspended, or revoked. The city manager shall consider any evidence presented by the applicant or franchisee that the city manager determines is relevant to the appeal before the city manager issues a final decision. Notice of the city's proposed action, and notice of the city’s final decision, shall be served upon the applicant or franchisee by certified mail.
- (b) The applicant or franchisee may appeal the city’s final decision by filing a notice of appeal with the office of administrative hearings pursuant to Chapter 1501 of the Cincinnati Municipal Code within fifteen (15) days after written notice of the city manager’s decision is issued. An appeal to the office of administrative hearings shall not act as a stay of the city manager’s decision to suspend or revoke a franchise.

**Sec. 811-15. - Penalties.**

A violation of any section of this chapter shall constitute a Class D civil offense.

Section 2. That Section 1501-9, “Class D Civil Offenses,” of Title XV, “Code Compliance and Hearings,” of the Cincinnati Municipal Code is hereby amended as follows:

**Sec. 1501-9. - Class D Civil Offenses.**

A person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class D Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for

the subsequent offense provided below, which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

(a) Class D Civil Offenses With Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 720-13	Private Facilities	Class E
(2)	§ 720-45	Notice of Violations	Class E
(3)	§ 720-69	Notice to Correct Drainage	Class E
(4)	Chapter 855	Rooming Houses	Class D
(5)	Chapter 895	Outdoor Advertising Signs	Class D
(6)	Chapter 1101	Administration, Cincinnati Building Code	Class E
(7)	Chapter 1106	General and Specialty Contractors	Class E
(8)	Chapter 1107	Elevator and Conveyer Equipment	Class E
(9)	Chapter 1117	Housing Code	Class E
(10)	Chapter 1119	Building Hazard Abatement Code	Class E
(11)	Chapter 1127	General Inspection Programs Code	Class E
(12)	Title XIV	Zoning Code	Class E
(13)	§ 1201-21	Maintenance	Class D
(14)	§ 1201-33	Evacuation	Class D
(15)	§ 1201-35	Spills and Leaks	Class D
(16)	Chapter 1235	Detectors, Early Fire Warning Systems	Class D
(17)	§ 1123-11(a)	Vacant Foreclosed Property Registration - Failure to register a vacant, foreclosed property.	Class E
(18)	§ 874-07(a)	Failure to Register Residential Rental Property	Class D

(b) Class D Civil Offenses With Civil Fines Not Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 718-25	Secret Street Uses	Class E
(2)	§ 721-59	Taking Material from Streets	Class E
(3)	§ 729-71(c)(2)	Personal Property Left Abandoned on Streets and Sidewalks - 4 or more items	Class D
(4)	§ 761-14	Eviction or Retaliation by Landlord	Class E
(5)	Chapter 891	Home Improvement	Class E
(6)	§ 1201-47	Failure to Comply with Orders	Class D
(7)	§ 1219-21	Causing Fire Through Negligence	Class D
(8)	Chapter 1251	Fire Starting Apparatus	Class D
(9)	§ 759-4	Use of a Motor Vehicle to Facilitate a Drug Related Crime	Class D
(10)	Chapter 722	Management and Control of the Use of the City Right-of-Way	Class E
(11)	Chapter 730	Commercial Waste Franchises	
(12)	§ 856-25(c)	Violation of Limitations on Operators or Operation of Short Term Rentals	Class D
(13)	§ 1125-17(1)	Failure to Register a Vacant Building	Class E
(14)	§ 1601-57	Enforcement of Emergency Orders	Class D
(15)	§ 1601-59	Enforcement of Health Orders	Class D
(16)	<u>Chapter 811</u>	<u>e-Scooter Rental Franchises</u>	<u>Class D</u>

Section 3. That existing Section 1501-9, “Class D Civil Offenses,” of Title XV, “Code Compliance and Hearings,” of the Cincinnati Municipal Code is hereby repealed.

Section 4. That the City Manager and the proper City officials are authorized to take all necessary and proper actions to carry out the provisions of this ordinance, including by updating applicable rules and regulations and policies and procedures in accordance with the modifications to the Cincinnati Municipal Code provided for herein.



Section 5. That, notwithstanding the provisions of new Chapter 811, “e-Scooter Rental Franchises” concerning the manner in which the City Manager is authorized to solicit and award franchises, the City Manager is authorized to negotiate, finalize, and execute franchise agreements with those e-scooter rental companies whose responses to Request for Proposals (RFP729ENGSCOOTERS) the City has determined to be most advantageous to the City, provided that the franchise agreements are consistent with the provisions of new Chapter 811, “e-Scooter Rental Franchises.”

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to establish franchise regulations for e-scooter scooter rental companies who operate within the City of Cincinnati as such devices and companies are presently operating within the city, in order to immediately provide for the safety and welfare of pedestrians, residents, businesses, city staff, and right-of-way users.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Additions indicated by underline; Deletions indicated by strikethrough.

Date: June 23, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

**202102323**

Subject: EMERGENCY ORDINANCE – MODIFYING CMC CHAPTER 719, “WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT OF WAY”

---

Attached is an emergency ordinance captioned as follows:

MODIFYING Title VII, “General Regulations,” of the Cincinnati Municipal Code by AMENDING the provisions of Chapter 719, “Wireless Communications Facilities in the Right of Way,” to ensure that the City’s regulation of wireless communication facilities in the public right-of-way is consistent with recent changes to applicable state and federal laws and regulations.

In light of recent changes in state and federal laws and regulations concerning the installation of small cells in the right of way, the City wishes to update the Cincinnati Municipal Code to ensure the provisions of the Cincinnati Municipal Code remain consistent with state and federal laws.

The reason for the emergency is the immediate need to modify Chapter 719, “Wireless Communications Facilities in the Right of Way,” of the Cincinnati Municipal Code to ensure it is consistent with applicable state and federal laws and regulations.

The Administration recommends passage of the attached emergency ordinance.

cc: John S. Brazina, Director, Transportation and Engineering

EMERGENCY

**City of Cincinnati**

JRS

**An Ordinance No. \_\_\_\_\_**

- 2021

**MODIFYING** Title VII, “General Regulations,” of the Cincinnati Municipal Code by **AMENDING** the provisions of Chapter 719, “Wireless Communications Facilities in the Right of Way,” to ensure that the City’s regulation of wireless communication facilities in the public right-of-way is consistent with recent changes to applicable state and federal laws and regulations.

WHEREAS, Cincinnati Municipal Code Chapter 719, “Wireless Communications Facilities in the Right of Way,” authorizes and governs wireless communication facilities in the City’s right-of-way, including facilities commonly referred to as “small cells” that rely upon 5G technology, the fifth generation of digital cellular network technology; and

WHEREAS, in light of recent changes in state and federal laws and regulations concerning the installation of small cells in the right of way, the City Council wishes to update the Cincinnati Municipal Code to ensure the provisions of the Cincinnati Municipal Code remain consistent with state and federal laws; and

WHEREAS, in authorizing the use of the public right-of-way for wireless communication facilities, the Council wishes to establish a clear and effective regulatory framework for managing wireless communication in the public right-of-way, including small cells, that promotes the public health, safety, and welfare, and the uniformity of wireless communication throughout the City of Cincinnati; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Chapter 719, “Wireless Communications Facilities in the Right of Way,” of the Cincinnati Municipal Code is hereby modified to read as follows:

**Chapter 719 - WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT OF WAY**

**Sec. 719-1. - Purpose and Goals.**

The purpose of this chapter is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, collocation, modification, operation, and removal of wireless communications facilities in the right of way. The goals of this chapter are to:

- (a) Provide standards for the siting, construction, installation, collocation, modification, operation, and removal of wireless communications facilities in the

city's right of way and for payment of fees and charges to be uniformly applied to all applicants and owners of wireless communications facilities or support structures for such facilities.

- (b) Establish basic criteria for applications to site wireless communications facilities in the right of way and authorize the director of the department of transportation and engineering to develop, publish, and from time to time amend applications and other associated materials to provide clear guidance to applicants.
- (c) Ensure that wireless communications facilities will conform to all applicable health and safety regulations and will blend into their environment to the greatest extent possible.
- (d) Enhance the ability of wireless communications carriers to deploy wireless infrastructure in the city quickly, effectively, and efficiently so that residents, businesses, and visitors benefit from ubiquitous and robust wireless service availability. Promote the rapid deployment of small cell infrastructure and related capital investment in the city by ensuring that the city grants or denies consent to install, operate, modify, or replace wireless communications facilities in a timely manner.
- (e) Preserve the character of the city's neighborhoods and historic districts. Protect the integrity of the residential areas and historic assets and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.
- (f) Comply with, and not conflict with or preempt, all applicable state and federal laws, including without limitation Section 101(a) and Section 704 of the Telecommunications Act, Pub. L. 104-104, 101 Stats. 56, 70 (Feb. 8, 1996) (codified as 47 U.S.C. §§ 253(a), 332(c)(7)), as may be amended or superseded, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. 112-96, 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)), as may be amended or superseded, and all Federal Communications Commission ("FCC") rules and regulations to interpret and implement applicable federal statutes.

#### **Sec. 719-2. - Applicability.**

- (a) *Existing wireless communications facilities.* Wireless communications facilities for which a permit has been issued prior to the effective date of this chapter shall not be required to meet the requirements of this chapter, except as set forth in Section 719-17, Nonconforming Wireless Communications Facilities.
- (b) *Exclusion for amateur radio facilities.* This chapter shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

- (c) *Exclusion for certain over-the-air receiving devices.* This chapter shall not govern the installation of any OTARD antennas covered under FCC regulations codified in 47 C.F.R. §§ 1.4000 et seq., as may be amended or superseded. OTARD antennas include, without limitation, direct-to-home satellite dish antennas less than one meter in diameter, television antennas and wireless cable antennas.
- (d) *Exclusion for handsets and user equipment.* This chapter shall not govern the use of personal wireless devices (e.g., cell phones) or other consumer-grade mobile user equipment used in the public right-of-way.
- (e) *Wireline backhaul facilities.* The permitting procedures and authorizations set forth in this chapter do not authorize the construction and operation of a wireline backhaul facility.
- (f) *Relationship to other chapters.* This chapter shall supersede all conflicting requirements of other titles and chapters of this the Cincinnati Municipal Code regarding the locating and permitting of wireless communications facilities in the right of way.

**Sec. 719-3. - General Definitions.**

For the purposes of this Chapter 719, ~~and except where expressly provided in Section 719-4, "Definitions Applicable to Type I Applications for Minor Modifications,"~~ the following words and phrases used in this Chapter 719 shall have the meanings ascribed to them in this Section 719-3, regardless of whether or not the words and phrases are capitalized. Several defined terms are identical to those found in Ohio Revised Code Section 4939.01, 47 U.S.C. § 1455, or 47 C.F.R. § 1.6100.

When the definitions contained herein conflict with identical terms contained in the Ohio Revised Code, the United States Code, the Code of Federal Regulation, or other applicable state or federal laws, rules, or regulations, the conflict shall be resolved by giving precedence to the federal definition or, in the absence of a federal definition, the state definition.

**Sec. 719-3-A1. - Abandoned.**

"Abandoned" means any wireless communications facility that is unused for a period of three hundred sixty-five days without the operator otherwise notifying the city and receiving the city' s approval.

**Sec. 719-3-A1-2. - Antenna.**

~~"Antenna" means any apparatus designed for the purpose of the transmission and/or reception of radio frequency ("RF") radiation, to be operated or operating from a fixed location to facilitate wireless communications services including but not limited to~~

~~the transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds. “Antenna” means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.~~

**Sec. 719-3-A13. - Applicant.**

“Applicant” means any person, including an operator, that who submits an application to the city to site, install, construct, collocate, modify, and/or operate a Wireless Communications Facility in the right of way.

**Sec. 719-3-B. - Base Station.**

“Base Station” means the same as defined by the FCC in 47 C.F.R. § ~~1.40001(b)(1)~~ 1.6100, as may be amended and interpreted by the FCC and any other authority with competent jurisdiction, ~~which defines that term as follows:~~

~~A structure or equipment at a fixed location that enables FCC licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined in 47 C.F.R. § 1.40001(b)(9) or any equipment associated with a Tower.~~

- ~~(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.~~
- ~~(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cell networks).~~
- ~~(iii) The term includes any structure other than a Tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.~~
- ~~(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i) (ii) of this section.~~

~~As an illustration and not a limitation, the FCC’s definition refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on~~

~~utility poles and other structures in the right of way, light standards, or traffic signals when such structure is approved by the city as an appropriate support for wireless transmission equipment. An existing structure without wireless equipment replaced with a new one designed to bear the additional weight from wireless equipment constitutes a base station.~~

**Sec. 719-3-C. - Collocation or Collocate.**

~~“Collocation” means the mounting or installation of a Wireless Communications Facility on an existing Eligible Support Structure or Potential Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, as more specifically defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended or superseded. “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless facilities on an existing wireless support structure, tower, base station, utility pole, or decorative pole.~~

**Sec. 719-3-D1. - Decorative Pole.**

“Decorative Pole” means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following attachments:

- (a) Electric lighting;
- (b) Specially designed informational or directional signage;
- (c) Temporary holiday or special event attachments;
- (d) Regulatory signage; or
- (e) Parking meters or parking meter supports.

**Sec. 719-3-D12. - Design Guidelines.**

“Design Guidelines” means those detailed design guidelines and examples promulgated by the department of transportation and engineering for the design and installation of structures supporting wireless communications facilities in the right of way, which are effective insofar as they do not conflict with FCC rules and regulations, applicable state law, or the design standards established in section 719-11 of this chapter.

**Sec. 719-3-D23. - Design Standards.**

“Design Standards” means those standards established in section 719-11 of this chapter, approved by the city planning commission and adopted by city council, for the design, construction, and installation of wireless communications facilities in the right of

way, which are supplemented by ~~D~~design ~~G~~guidelines, and which are effective insofar as they do not conflict with state or federal law, including without limitation any applicable FCC rules and regulations.

**Sec. 719-3-E1. - Eligible Support Structure.**

“Eligible Support Structure” means the same as defined by the FCC in 47 C.F.R. § ~~1.40001(b)(4)~~ 1.6100, as may be amended, which defines that term as “[a]ny tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.”

**Sec. 719-3-E2. - Eligible Support Structure Request or Eligible Facilities Request.**

“Eligible Support Structure Request” or “Eligible Facilities Request” means the same as defined in 47 U.S.C. 1455(a)(2) and by the FCC in 47 C.F.R. § 1.6100, as may be amended, which defines that term as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment.”

**Sec. 719-3-E3. - Existing.**

“Existing” means the same as defined by the FCC in 47 C.F.R. § 1.6100, as may be amended, which provides that “[a] constructed tower or base station is existing for purposes of [the FCC’s Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.”

**Sec. 719-3-H. - Historic District.**

“Historic District” means a building, property, or site, or group of buildings, properties, or sites that are either of the following:

- (a) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C; or
- (b) A registered historic district as defined in O.R.C. Section 149.311, including existing locally designated historic districts, landmarks, and sites governed by Cincinnati Municipal Code Chapter 1435, “Historic Preservation.”



**Sec. 719-3-O1. - Operator.**

“Operator” means a wireless service provider, cable operator, or a video service provider that operates a wireless communications facility and provides wireless service. For the purpose of this chapter, “operator” includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. § 153(20), and services that are fixed in nature or use unlicensed spectrum.

**Sec. 719-3-O2. - O.R.C.**

“O.R.C.” means the Ohio Revised Code.

**Sec. 719-3-P1. - Potential Support Structure.**

“Potential Support Structure” means an existing building or structure, other than a Tower as defined in this section, that may be transformed into a base station through the mounting or installation of an antenna or transmission equipment after that the city approves it as a support structure and the permittee installs transmission equipment pursuant to such approval; ~~P~~potential ~~S~~support ~~S~~structures include but are not limited to buildings, steeples, water towers, utility poles, light poles, ~~C~~city-owned structures in the right of way, and outdoor advertising signs.

**Sec. 719-3-P2. - Person.**

“Person” means; any natural person, corporation, or partnership and also includes any governmental entity. ~~without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.~~

**Sec. 719-3-R. - Right of Way or Public Way.**

“Right of Way” or “Public Way” means real property for or devoted to (1) public transportation purposes; or (2) the placement of the city’s municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right of way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the city.

**Sec. 719-3-S1. - Site.**

“Site” means the same as defined by the FCC in 47 C.F.R. § 1.6100, as may be amended, which provides that “[f]or towers other than towers in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”

**Sec. 719-3-S2. - Small Cell Facility.**

“Small Cell Facility” means transmission equipment or a wireless facility that meets both of the following requirements:

- (a) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume; and
- (b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- (c) The term includes a micro wireless facility as defined in O.R.C. Section 4929.01(H).

**Sec. 719-3-S3. - Substantial Change.**

“Substantial eChange” means the same as defined by the FCC in 47 C.F.R. §1.40001(b)(7) 1.6100, as may be amended, and as applicable to facilities in the public right-of-way, which defines that term as a collocation or modification that:

- (a) Increases the overall height more than 10% or 10 feet (whichever is greater);
- (b) Increases the width more than 6 feet from the edge of the wireless tower or base station;
- (c) Involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets;
- (d) Involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets;

- (e) Involves excavation or deployment of equipment outside the area in proximity to the structure and other transmission equipment already deployed on the ground;
- (f) Would defeat the existing concealment elements of the support structure as determined by the Department; or
- (g) Violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change.

Note: For clarity, the definition in this chapter includes only the definition of a substantial change as it applies to facilities in the public right-of-way. The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measured from the ~~originally permitted~~ originally permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date that Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act.

**Sec. 719-3-T1. - Tower.**

“Tower” means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site, as more specifically defined by the FCC in 47 C.F.R. § ~~1.40001(b)(9)~~ 1.6100, as may be amended or superseded.

**Sec. 719-3-T2. - Transmission Equipment.**

“Transmission Equipment” means any equipment that facilitates transmission of any FCC licensed or authorized wireless communications service, including but not limited to radio transceivers, and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply, as more specifically defined by the FCC in 47 C.F.R. § ~~1.40001(b)(8)~~ 1.6100. This definition includes equipment in any technological configuration associated with any FCC authorized wireless transmission, licensed or unlicensed, commercial mobile, private mobile, fixed wireless microwave backhaul, and fixed broadband.

**Sec. 719-3-U. - Utility Pole.**

“Utility Pole” means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. “Utility pole” excludes street signs and decorative poles.

**Sec. 719-3-W1. - Wireless Facility**

(a) “Wireless Facility” means transmission equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:

1. Equipment associated with wireless communications; and
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(b) The term includes small cell facilities and micro wireless facilities as defined in O.R.C. Section 4929.01(H).

(c) The term does not include any of the following:

1. The structure or improvements on, under, or within which the equipment is collocated; or
2. Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

**Sec. 719-3-W1-W2. - Wireless Communications Facility.**

“Wireless Communications Facility” means any unstaffed installation for the transmission and/or reception of radio frequency signals for wireless communications services, typically consisting of a tower or base station, transmission equipment, equipment cabinets, and all materials or techniques used to conceal the installation.

**Sec. 719-3-W3. - Wireless ROW Permit.**

“Wireless ROW Permit” means a wireless facility right-of-way occupancy permit as further defined in Section 719-9(c).

**Sec. 719-3-W2W4. - Wireless Communications Service.**

“Wireless Communications Service” means any FCC-licensed or authorized wireless communication service including, without limitation, any personal wireless

services, as defined in 47 U.S.C. § 332(e)(7)(D). any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

**Sec. 719-3-W3. - Wireless ROW Permit.**

“Wireless ROW Permit” means a wireless facility right of way occupancy permit as further defined in Section 719-9(e).

**Sec. 719-3-W3W5. - Wireless Service Provider.**

“Wireless Service Provider” means a person who provides wireless service as defined in O.R.C. Section 4927.01(A)(20).

**Sec. 719-3-W4W6. - Wireless Support Structure.**

“Wireless Support Structure” means a tower, a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole that is capable of supporting small cell facilities. As used this chapter, “wireless support structure” excludes all of the following:

- (a) A utility pole or other facility owned or operated by a municipal electric utility;
- (b) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses; and
- (c) A decorative pole.

**Sec. 719-3-W7. - Wireline Backhaul Facility.**

“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.

**Sec. 719-3-W7 W8 – Work Permit**

“Work Permit” means a permit issued by the city that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the public way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the public way.

**Sec. 719-4. – Definitions Applicable to Type I Applications for Minor Modifications.**

For Type I applications for minor modifications, the following words and phrases

~~shall have the meanings ascribed to them below, regardless of whether or not the words and phrases are capitalized. In the event that any defined term conflicts with any applicable federal law or regulation, the federal law or regulation shall control.~~

~~**Sec. 719-4 E1. -- Eligible Support Structure Request.**~~

~~"Eligible Support Structure Request" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as "[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) [c]ollocation of new transmission equipment; (ii) [r]emoval of transmission equipment; or (iii) [r]eplacement of transmission equipment."~~

~~**Sec. 719-4 E2. -- Existing.**~~

~~"Existing" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which provides that "[a] constructed tower or base station is existing for purposes of [the FCC's Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition."~~

~~**Sec. 719-4 S. -- Site.**~~

~~"Site" means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that "[f]or towers other than towers in the public right of way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."~~

~~**Sec. 719-5. - Applications.**~~

- ~~(a) *Requirement.* Anyone seeking making an eligible facilities request or seeking consent to site, install, construct, modify, repair, or collocate a Wwireless Communications Facility in the right of way shall first duly file a written application with the city's department of transportation and engineering, in accordance with the requirements in this section and the application requirements set forth in the Design Guidelines as modified from time to time by the director of the department of transportation and engineering by the authority granted in Section 719-11(c) of this chapter.~~
- ~~(b) *Single facility per application.* A single application shall propose the siting, installation, construction, modification, repair, or collocation of no more than one existing Eligible Support Structure or wireless support structure, installation on a Potential Support Structure, or construction of a new tower or base station.~~

Applications and eligible facilities requests may be consolidated as permitted by O.R.C. Section 4939.0312 but without any reduction in applicable fees.

(c) *Owner information.* Applications shall include the name of the person who owns or will own the wireless communications facility, wireless facility, wireless support structure, base station, tower, or potential support structure for an eligible facilities request or for which consent is requested. A permit or record of consent issued by the city shall include the name of the person who owns or will own the facility or structure.

(e-d) *Recovery of additional costs incurred in processing application.* The department of transportation and engineering is authorized to charge the applicant for recovery of additional, reasonable costs incurred in its analysis, evaluation, and response to an application for an eligible facilities or request for consent under this chapter if the actual costs of review exceed the application fee. Nothing in the reasonableness limitation on additional costs shall be construed to bar or limit the city's authority to incur costs it deems necessary or appropriate in connection with the application. Additional costs may include unforeseen city staff review costs and the costs of third-party technical experts hired to assist with review application. No city construction work permits or ROW wireless occupancy permits shall issue until and unless the applicant pays the nonrefundable application fees and such additional costs as are authorized to be recovered under this paragraph.

1. *Authorization to retain independent consultants.* The director of the department of transportation and engineering may, in his or her discretion, and at any time in the review process, select and retain an independent consultant with expertise in telecommunications satisfactory to the department of transportation and engineering in connection with any permit application. In the event that the department of transportation and engineering decides to retain an independent consultant for technical review, it shall send written notice to the applicant including a nonbinding estimate of the cost for such review. The applicant shall have five business days from the date of mailing of notice to elect to withdraw the application without any liability for any costs or expenses in connection with the independent technical review.

2. *Scope.* The department of transportation and engineering may request independent consultant review on any issue that involves specialized or expert knowledge in connection with the permit application. Technical review issues may include, but are not limited to:

i. ~~Permit a~~Application completeness or accuracy;

ii. Whether and where a significant gap exists or may exist, and whether such a gap relates to service coverage or service capacity;

- iii. The applicability, reliability, and/or sufficiency of analyses or methodologies used by the applicant to reach conclusions about any issue within this scope; and
  - iv. Any other issue that requires expert or specialized knowledge identified by the department of transportation and engineering.
3. *No permit until payment.* The applicant must pay for the cost of consultant technical review and for the technical consultant's testimony in any hearing as requested by the department of transportation and engineering. No permit shall issue to an applicant where that applicant has not timely paid any fee required under the Cincinnati Municipal Code or if the applicant owes payment on outstanding invoices for costs recoverable by the City under this Chapter 719.
4. *Application Fees.* The nonrefundable fee charged by the city for an application for consent or an eligible facilities request shall not exceed two hundred and fifty dollars per each small cell facility covered by the application. This limit shall be increased by ten percent, rounded to the nearest five dollars, every five years commencing July 1, 2021. During each five-year period, the adjustment may be applied incrementally or as a single adjustment as determined by the department of transportation and engineering. For Type I applications, the department of transportation and engineering may, in its discretion, allow for multiple locations from a single applicant to be listed under a single application. Additionally, providers shall pay all fees as required for work permits and ROW occupancy permits.

**Sec. 719-7. - Categories of Applications; Review Timelines.**

In accordance with FCC regulations, the department of transportation and engineering shall classify every application to locate a ~~W~~wireless ~~C~~ommunications ~~F~~acility in the right of way as one of the following ~~three~~ four types:

- (a) A Type I application is for a minor modification that:
  - 1. Involves collocation, removal, or replacement of transmission equipment or a wireless facility, including a small cell facility, on an existing wireless support structure, tower, or base station; and ~~2. —D~~does not substantially change the physical dimensions of the existing wireless support structure, tower, or base station.
  - 2. 60-day period for review. The city shall approve a Type I application within sixty days, upon confirming that the requested modification constitutes an eligible facilities request and does not constitute a substantial change under 47 CFR § 1.6100. The period for review may be tolled in accordance with 47 CFR § 1.6100.

- (b) A Type II application is for a modification that:



1. Involves collocation, removal, or replacement of transmission equipment or a wireless facility, including a small cell facility, on an existing wireless support structure, tower, or base station; and 2.—Substantially changes the physical dimensions of the existing wireless support structure, tower, or base station or does not qualify for approval pursuant to 47 U.S.C. § 1455(a) for any lawful reason.
2. 90-day period for review. The city shall review and approve or deny a Type II application within ninety days, in accordance with O.R.C. Section 4939.031.

(c) A Type III application is one that proposes:

1. Siting new transmission equipment or a new wireless facility, including a small cell facility, on an existing wireless support structure a Potential Support Structure in the right of way that does not already support transmission equipment or a wireless facility. ; or
2. 90-day period for review. The city shall review and approve or deny a Type III application within ninety days, in accordance with O.R.C. Section 4939.031. Siting a new wireless communication facility on a new tower or other support structure in the right of way.

(d) A Type IV application is one that proposes:

1. Siting new transmission equipment or a new wireless facility, including a small cell facility, on a new wireless support structure, tower, base station, utility pole, decorative pole, or potential support structure in the right of way.
2. 120-day period for review. The city shall review and approve or deny a Type IV application within one hundred twenty days, in accordance with O.R.C. Section 4939.031.

The timelines for review of Type II, Type III, and Type IV applications established in this section may be tolled under certain circumstances, in accordance with O.R.C. Section 4939.036.

When the timelines for review contained herein conflict with the timelines for review mandated by the Ohio Revised Code, the United States Code, the Code of Federal Regulation, or other applicable state or federal laws, rules, or regulations, the conflict shall be resolved by giving precedence to the federal timeline or, in the absence of a federal timeline, the state timeline.

**Sec. 719-9. - Application Review and Wireless Facility Right-of-Way Occupancy Permit.**

- (a) *General standard of review for wireless communications facilities.* All wireless communications facilities in the right of way shall conform to the provisions of this chapter and to the ~~D~~design ~~G~~guidelines as modified from time to time by the director

of the department of transportation and engineering. The department of transportation shall review and consider each application according to the application classifications, review processes, and deployment standards described in the ~~D~~design ~~G~~guidelines.

- (b) *Notice to residents.* Within 10 days of filing a ~~Type II~~ or Type III or Type IV application, the applicant shall provide the department of transportation and engineering with proof of notice to the owners of all real property located within a 2100-foot ~~feet~~ of the site of the proposed ~~W~~wireless ~~C~~communications ~~F~~facility or as further provided in the design guidelines. as well as Separate notice including a list of impacted streets shall be sent to the corresponding community council(s) and a copy provided to the department of transportation and engineering. The intent of the notices is to allow persons who live or work nearest the site the opportunity to ask questions and educate themselves and to apprise the department of transportation and engineering of conditions that may not be readily apparent from otherwise available information. The notices shall inform interested persons of the opportunity to file written comments to be submitted to the department of transportation and engineering, which comments should address whether the application conforms to the provisions of this chapter. The applicant shall provide the department with proof that the notices required under this section has been given, including a mailing list for all recipients and a copy of the mailed notices. Notwithstanding the above, the department of transportation and engineering may, at its discretion, ~~provide~~ require additional public notice if it determines such notice is in the best interests of the public. Notice shall not be required for Type I or Type II applications.
- (c) *Written decision.* Within five working days after the department of transportation and engineering renders a decision on an application, it shall send written notice to the applicant. Any denial shall include the reasons for the denial and information regarding the process for an administrative appeal under Section 719-9.
- (d) *Approval.* Approval of an application shall include the following permissions:
1. *Permit to construct.* A work permit to construct the approved wireless communications facility, subject to any conditions established by the department of transportation and engineering to carry out the purposes and intent of this chapter and the Cincinnati Municipal Code.
  2. *Wireless facility right-of-way occupancy permit.* A wireless right-of-way occupancy permit (~~“Wireless ROW Permit”~~) granting the applicant permission to occupy the right of way at the proposed site and subject to (a) the standard conditions required by Section 719-10 and (b) any additional conditions required by the director of the department of transportation and engineering to carry out the purposes and intent of this chapter and the Cincinnati Municipal Code. The ~~W~~wireless ROW ~~P~~permit shall not convey title, equitable or legal, in the right of way.

- (e) *Restrictions on Wireless ROW Permits.* A ~~W~~ireless ROW ~~P~~ermit may be transferred upon notification to the city and acceptance by the transferee to allow the transferee to site wireless facilities in the same location on the same supporting structure as the transferor. Such a transfer may be made only to a wireless service provider who possesses a current ~~W~~ireless ROW ~~P~~ermit from the city for siting wireless facilities elsewhere in the right of way.
- (f) *Denial.* The city reserves the right to deny an application if any one of the following conditions exist:
1. The applicant has not demonstrated that its application conforms to the provisions of this chapter and the Cincinnati Municipal Code, including the ~~D~~esign ~~G~~uidelines established pursuant to this chapter;
  2. The applicant is not authorized to conduct business in the State of Ohio;
  3. For any Type I application, the applicant has failed to show that the project qualifies for approval as an eligible facilities request, pursuant to 47 U.S.C. § 1455(a) and the related FCC regulations at 47 C.F.R. § ~~1.40001~~ 1.6100 et seq.;
  4. For any Type II, ~~or~~ Type III, or Type IV application, the applicant has failed within the prior three years to comply or is presently not in full compliance with the requirements of this chapter with regard to another ~~W~~ireless ~~C~~ommunications ~~F~~acility that is not the subject of the application in question;
  5. The applicant is in default of its obligation to pay to the city fees imposed by this chapter;
  6. The design or location does not comply with the relevant standards promulgated by the American Association of State Highway and Transportation Officials (AASHTO) and utilized by the department of transportation of engineering for construction in the right of way;
  7. The design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG) promulgated by the United State Access Board.
- (g) *Multiple requests for same or nearby location.* If multiple requests are received by the city to install two or more wireless facilities or wireless support structures that would violate applicable spacing requirements under the design guidelines, or to collocate two or more wireless facilities on the same wireless support structure, the city may resolve conflicting requests through whatever reasonable and nondiscriminatory manner the city deems appropriate.
- (gh) *Appeal of denial on the merits.* Upon denial of an application for failure to meet the requirements of this chapter, the applicant may appeal the decision to the director of

the department of transportation and engineering for reconsideration. The appeal must be in writing and delivered to the director no later than 5:00 p.m. (EST) on the tenth business day after issuance of written notification by the city of denial of the permit. An appeal must provide a detailed explanation, in writing, of the reasons the applicant contends the proposed wireless facility satisfies the requirements of Chapter 719 (including if the application qualifies for a limited exemption for personal wireless service facilities under Section 719-9(h)). The appeal should include all relevant supporting documentation. The director shall review the written appeal together with other evidence in the record and grant the permit if the director determines that, based on substantial evidence in the application record, the permit complies with the requirements of Chapter 719. The director shall issue a written decision within ten business days of the filing of the appeal. Failure by applicant to appeal and request reconsideration under this section shall constitute a failure to exhaust administrative remedies for purposes of any subsequent appeal in a court of law.

(hi) *Limited exemption for personal wireless service facilities.* Federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services. Due to wide variation among wireless facilities and technical service objectives, and due to changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. Circumstances in which an effective prohibition may occur are extremely difficult to discern, and specified findings to guide the analysis promotes clarity and the City's legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed wireless communications facility, would effectively prohibit the provision of personal wireless services, the director of the department of transportation and engineering may grant a limited, one-time exemption from strict compliance, subject to the following provisions:

1. *Required findings.* The director of the department of transportation and engineering shall not grant any exemption unless the applicant provides each of the following:
  - i. Evidence that the proposed wireless facility qualifies as a "personal wireless services facility" as defined in 47 U.S.C. § 332(c)(7)(C)(ii);
  - ii. A clearly defined and reasonable technical service objective and a clearly defined potential site search area; and
  - iii. A meaningful comparative analysis that includes the factual reasons why (1) any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record are not technically feasible and (2) the proposed location and design deviation is the least noncompliant location and design necessary to reasonably achieve the applicant's technical service objective.

2. *Scope of exemption.* The director of the department of transportation and engineering shall limit the exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The department of transportation and engineering may adopt conditions of approval specific to a permit issued as a limited exemption pursuant to this section, as reasonably necessary to promote the purposes in this chapter and protect the public health, safety, and welfare.

**Sec. 719-10. - Standard Conditions of Permit Approval.**

- (a) *Standard conditions of approval.* Permission to site wireless communications facilities in the right of way shall be conditioned on compliance with the standard conditions of approval provided in this Section 719-10. The department of transportation and engineering may add or modify conditions of approval as necessary or appropriate to protect and promote the public health, safety, and welfare.
- (b) *Wireless ROW Permit duration; term.* For Type II, ~~and~~ Type III, and Type IV permits, the ~~W~~wireless ROW ~~P~~permit will automatically expire ten years from the issuance date, except when federal or state law authorizes the ~~C~~city to issue a permit with a shorter term. Any request for a permit renewal shall be reviewed as request for a new permit subject to all applicable procedures and standards in effect at the time the request is received. An operator may remove a wireless communications facility at any time subject to applicable work permit and city requirements.
- (c) *Standard conditions of approval for Type I permits.* Any Type I permit approved or deemed granted by the operation of law shall be automatically subject to the following conditions of approval:
  1. *Permit ~~d~~Duration for Type I approvals.* The city's grant or grant by operation of law of a Type I eligible facilities request ~~permit~~ constitutes a ~~federally-mandated~~ federally mandated modification to the underlying permit or approval of the subject wireless support structure, tower, and/or base station. The ~~c~~City's grant or grant by operation of law of a Type I ~~permit~~ eligible facilities request will not extend the permit term for any underlying permit or other regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject wireless support structure, tower, and/or base station.
  2. *Accelerated permit terms due to invalidation.* In the event that any court of competent jurisdiction invalidates any portion of 47 U.S.C. § 1455(a) or any FCC rule that interprets 47 U.S.C. § 1455(a) such that federal law would not mandate approval of any Type I permit, such permit shall automatically expire one year from the effective date of the judicial order, unless the decision specifically does not authorize accelerated termination of previously approved Type I permits. A permittee shall not be required to remove its improvements approved under the invalidated Type I permit if it submits an application for a Type II, ~~or~~ Type III, or

Type IV permit for those improvements before the one-year period ends. The director of the department of transportation and engineering, at his or her discretion, may extend beyond one-year the time in which a permittee may apply for a Type II, or Type III, or Type IV permit for an invalidated Type I permit.

3. *No waiver of standing.* The City's grant or grant by operation of law of a Type I permit does not waive, and shall not be construed to waive, any standing by the City to challenge 47 U.S.C. § 1455(a), any FCC rules that interpret 47 U.S.C. § 1455(a), or any particular Type I permit eligible facilities request.
- (d) *Standard conditions of approval for all ~~W~~wireless ROW ~~P~~permit.* All applications for all four types Type I, II, and III of wireless ROW permits shall be subject to the following standard conditions of approval by operation of law:
1. *Compliance with all applicable laws.* Permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations, ordinances, or other rules.
  2. *Inspections; emergencies.* The City or its designee may inspect a ~~W~~wireless ~~C~~ommunications ~~F~~acility in the right of way upon reasonable notice to the permittee. The permittee shall cooperate with all inspections. The City reserves the right to support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
  3. *Contact information for responsible parties.* Permittee shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address, and email address for at least one natural person and emergency contact information. All such contact information for responsible parties shall be provided to the department of transportation and engineering promptly upon request.
  4. *Indemnities.* To the fullest extent permitted by law, all ~~The~~ permittees, operators, and, if applicable, ~~the~~ non-government owners of a ~~W~~wireless ~~C~~ommunications ~~F~~acility shall defend, indemnify, and hold harmless the City and its agents, officers, officials, and employees from:
    - i. Any and all damages, liabilities, injuries, losses, costs, and expenses arising out of any claims, demands, lawsuits, writs of mandamus, or other actions or proceedings brought against the City to challenge, attack, seek to modify, set aside, void, or annul the City's approval of the applicable ~~W~~wireless ROW ~~P~~permit; and

- ii. Any and all damages, liabilities, injuries, losses, costs, and expenses and any claims, demands, lawsuits, or other actions or proceedings of any kind, whether for personal injury, death, or property damage, arising out of or in connection with the activities or performance of the permittee or its agents, employees, licensees, contractors, subcontractors, or independent contractors.
  - iii. In the event the City becomes aware of any such actions or claims, the City shall promptly notify the permittee and shall reasonably cooperate in the defense. It is expressly agreed that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee (as applicable) shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense.
5. *Interference with public safety radio services.* In the event that the City has reason to believe that permittee's radio communications operations are causing interference with the City's radio communications operations, then the permittee shall, at its cost, immediately cooperate with the City to either rule out permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.
6. *Adverse impacts on adjacent properties.* Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
7. *General maintenance.* The site and the facility, including but not limited to all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
8. *Good condition required.* Wireless communications facilities 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 menace or endanger the life or property of any person. In the event any damages occur to a non-city-owned wireless support structure, tower, or base station, the wireless support structure, tower or base station shall be repaired within 20 days.
9. *Graffiti abatement.* Permittee shall remove any graffiti on the wireless facility at permittee's sole expense in a timely manner.
10. *RF exposure compliance.* All facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards.

11. *Relocation for public improvement projects.* Permittee shall remove and relocate the permitted ~~W~~wireless ~~C~~ommunications ~~F~~acility at permittee's sole expense to accommodate construction of a public improvement project by the ~~C~~ity as required under Chapter 722 of the Cincinnati Municipal Code.
12. *Removal if discontinued use.* In the event that the use of a ~~W~~wireless ~~C~~ommunications ~~F~~acility is discontinued or abandoned, the owner shall provide written notice to the city of its intent to discontinue use or abandon, and the date when the use shall be discontinued or is abandoned. If a ~~W~~wireless ~~C~~ommunications ~~F~~acility is not removed within ninety (90) days of discontinued use, or is determined abandoned by the city, the city may remove it at the owner's expense irrespective of the notice requirement under this section.
13. *Taxes and assessments.* To the extent taxes or other assessments are imposed by taxing authorities on the use of city property as a result of an applicant's use or occupation of the right of way, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority.
14. *Completion within 180 days.* The collocation of a wireless facility or the construction of a new wireless support structure, tower, or base station for which a permit is granted shall be completed within one hundred eighty days after issuance of the permit. The city and the operator may agree in writing to extend this period if a delay is caused by make-ready work for a city-owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that the operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services and the additional time to complete installation does not exceed three hundred sixty days after issuance of the permit. If the collocation or construction is not accomplished with the designated time period without a prior extension having been granted by the city, the permit shall be void.

**Sec. 719-11. - Design Standards and Siting Preferences.**

- (a) *General design principles.* Every Type II, ~~and~~ Type III, ~~and~~ Type IV ~~W~~wireless ~~C~~ommunications ~~F~~acilities must conform to the following design principles:
  1. The proposed wireless communications facility, its support structure, equipment, and all associated improvements, shall be designed and sited in a manner that is sympathetic to the particular architectural character of the buildings and compatible with the streetscape in the vicinity of the proposed project site;
  2. Design elements of the proposed wireless communications facility, its support structure, equipment, and all associated improvements, shall be sensitively selected to reflect the detailing and materials associated with the buildings and streetscape in the vicinity of the proposed project site;



3. The proposed wireless communications facility, its support structure, equipment, and all associated improvements, shall be designed and sited in a manner that does not adversely impact right-of-way circulation, accessibility, or obstruct existing or planned-future uses of the right-of-way; and
  4. When sited in a Historic District, the proposed wireless communications facility shall be designed or concealed to mitigate adverse impacts on the historic environment based upon reasonable, technically feasible, and nondiscriminatory design criteria. No design or concealment criteria so imposed shall have the effect of prohibiting any operator's technology, nor may any such measures be considered a part of a small cell facility for purposes of the size restrictions in the definition of small cell facility.
  45. The proposed wireless communications facility shall comply with all applicable design, construction and location provisions in the Ddesign Gguidelines.
- (b) *Design guidelines.* The department of transportation and engineering shall promulgate additional detailed Ddesign Gguidelines for the design and installation of wireless communications facilities in the right of way, which the department shall consider in reviewing an application. The Ddesign Gguidelines will accord with this section but will provide greater detail, description, and examples of acceptable wireless facilities including visual depictions. In addition, the Ddesign Gguidelines shall provide administrative and procedural guidance to applicants such as, for example, a list of minimum application requirements. The provisions in this section shall not limit or prohibit the department's discretion to promulgate and make publicly available other information, materials or requirements in addition to, and separate from, the Ddesign Gguidelines.
- (e)1. The Ddesign Gguidelines shall be reviewed and approved by the city planning commission before being finalized. The director of the department of transportation and engineering shall have authority to update or supplement the Ddesign Gguidelines to address relevant changes in law, technology, or administrative processes. Any revisions to the Ddesign Gguidelines that would materially modify the physical design requirements for wireless communications facilities to make them more obtrusive or materially modify the standard and minor review locations for wireless facilities shall be presented to the city planning commission for review and recommendation at a duly-noticed hearing prior to adoption by the director. The notice shall be transmitted, at minimum, to all community councils and any person holding a Wwireless ROW Ppermit under Chapter 719 or having an active permit application for the same. In the event of any conflict between the Ddesign Gguidelines and the standards articulated in this chapter of the Cincinnati Municipal Code, the language of this chapter takes precedence over the language of the Ddesign Gguidelines.

(d)2. For revisions to the ~~D~~design ~~G~~guidelines required to be presented to the city planning commission under Section 719-11~~(e)~~(b)(1), the city shall provide notice of the proposed revisions to all community councils and any person who holds a permit under this Chapter 719, and shall provide reasonable time (not less than 14 days) for those persons to review and comment on the proposed modifications.

(c) Alternate location. The city may propose an alternate location to the proposed location of a new wireless communications facility that is within one hundred feet of the proposed location or within a distance that is equivalent to the width of the public way in or on which the new wireless communications facility is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

### **Sec. 719-13. - Recovery of Costs; Use of Revenue.**

All costs recovered under this chapter shall be used to reimburse the department of transportation and engineering for its costs incurred in responding to applications and monitoring installation and maintenance of wireless communications facilities in the right of way pursuant to this chapter.

### **Sec. 719-15. - Safety Requirements.**

Nothing in this chapter precludes the city from applying its generally applicable health, safety, and welfare regulations to an eligible facilities request or when granting consent for a wireless communications facility, a wireless facility, including a small cell facility, a wireless support structure, a tower, or a base station. These standards include, but are not limited to, the following specific requirements:

- (a) *Prevention of failures and accidents.* Any person who owns a ~~W~~wireless ~~C~~ommunications ~~F~~acility sited in the right of way shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- (b) *Compliance with fire safety and FCC regulations.* Wireless communications facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- (c) *Surety bond or equivalent financial tool for cost of removal.* All owners must procure and provide to the city a bond; ~~or must provide proof of~~ an equivalent financial mechanism; in an amount determined by the department of transportation and engineering, to ensure compliance with all provisions of this section and to cover

costs of damage to public property caused by the wireless communications facility. The bond or equivalent financial method must specifically cover the cost of removal of each Wwireless Communications Facility which the owner installs in the right of way in case the city has to remove or pay for removal of the wireless facility. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.

(d) Relocation or adjustment for safety purpose. If requested by the city, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the public way at no cost to the city, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with local law.

**Sec. 719-17. - Nonconforming Wireless Communications Facilities.**

- (a) Any Wwireless Communications Facility sited in the right of way that is legally in existence on the date of the adoption of this chapter but that does not comply with the requirements of this chapter shall be permitted to remain in the right of way but shall be considered a nonconforming Wwireless Communications Facility.
- (b) As of the effective date of the ordinance establishing this chapter, the owner of the nonconforming facility and the facility itself are subject to the standard conditions found in Section 719-10 and the maintenance requirements found in Section 719-15 of this Chapter.
- (c) If a nonconforming Wwireless Communications Facility is hereafter damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this chapter of the Cincinnati Municipal Code and the Design Guidelines.
- (d) The provisions in this section shall not be applied to prohibit or deny any collocation or modification pursuant to a Type I application or eligible facilities request, as required by FCC regulations.

**Sec. 719-19. - Severability.**

The provisions of any part of this chapter are severable. If any provision or subsection, or the application of any provision or subsection to any person or circumstances, is held invalid, the remaining provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be made invalid as well. It is declared to be the intent of this section that the remaining provisions would have been adopted had such invalid provisions not been included in this chapter when originally adopted by Council.

**Sec. 719-99. - Penalties.**

- (a) Any person who shall erect, construct, reconstruct, alter, repair, convert, attach, or maintain any Wireless Communications Facility in violation of any of the terms of this chapter, or who, being the owner or agent of the owner of any lot, tract, or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach, or maintain any such facility, shall be deemed to have violated the provisions hereof and commits a Class D Civil Offense as defined by § 1501-9(a) of the Cincinnati Municipal Code each day during the period such violation continues.
- (b) If any Wireless Communications Facility is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the city, in addition to other remedies, may institute in the name of the city any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such facility, and/or to prevent any illegal act, conduct, business, or use in or about such facility.
- (c) The department of transportation and engineering is authorized to make requests and to issue orders regarding wireless communications facilities in the right of way for the purpose of public safety and compliance with this chapter of the Cincinnati Municipal Code. The department of transportation and engineering is also authorized to conduct visual and external inspections of wireless communications facilities and support structures in the right of way at any time and shall make efforts to coordinate with the provider responsible for a Wireless Communications Facility for any internal inspection of the relevant equipment.

Section 2. That existing Chapter 719, “Wireless Communications Facilities in the Right of Way,” of the Cincinnati Municipal Code is hereby repealed.

Section 3. That the City Manager and the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Section 1 through 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to modify Chapter 719, “Wireless Communications Facilities,”

of the Cincinnati Municipal Code to ensure it is consistent with applicable state and federal laws and regulations.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Deletions are struck through. Additions are underlined.

August 4, 2021

To: Mayor and Members of City Council

From: Paula Boggs Muething, City Manager

**202102462**

**Subject: 5G NETWORKS SAFETY; CITY ABILITY TO REGULATE**

---

**REFERENCE DOCUMENT #202101145**

On March 24, 2021, the following item was referred for a report:

MOTION, submitted by Councilmember Goodin, Vice Mayor Smitherman, and Councilmembers Sundermann, Kearney, and Keating, New 5G mobile communications technology has necessitated the deployment of thousands of small cell system towers throughout the United States. Such towers are now being deployed in Cincinnati neighborhoods. Accordingly, WE MOVE that the Administrative advise Council regarding all potential methods of regulating 5G small cell system towers under the City's Municipal Code, Administrative Code and Zoning Code.

**Summary**

State and federal law grant telecom providers broad rights to locate their small cell facilities in the public right-of-way, including on City-owned poles. The rules establish “shot clocks” that require cities to approve small cell facilities within statutory time limits that are, in some cases, as short as 30 days. State and federal law also limit the fees and permit conditions that may be placed on small cell facilities. And, lastly, cities have no authority whatsoever to regulate small cells on the basis of health or environmental concerns. In its limited authority, the City has the ability to issue design guidelines for small cell facilities and to regulate placement based on right-of-way management principles.

**Background & Analysis**

5G is the fifth generation of digital cellular network technology, which utilizes a higher-frequency band of the wireless spectrum. Among other things, this technology allows for faster internet streaming and enhanced functionality of cell phones. However, 5G wave signals do not travel as far as signals generated by earlier technology, and thus the development of 5G networks requires many more (although smaller) antennae spaced closer together than previous networks. Many of these antennae are mounted on poles in the right-

of-way, typically in the same general locations that other utility poles are found. These pole-mounted facilities are commonly referred to as “small cells.”

As wireless cellular telecommunication providers have begun to build out their 5G networks within the city, questions have arisen concerning the extent to which the City may prohibit or regulate the small cell facilities that comprise those networks. This report, which the Administration has developed in consultation with the Law Department, addresses the City’s authority to specifically regulate small cell facilities’ radiofrequency (“RF”) emissions and the City’s general regulatory authority over those facilities. The limits of City authority are detailed below. Generally, however, federal and state law expressly prohibit the City from regulating RF emissions, and the City is preempted to a significant degree by state and federal law in how it may otherwise regulate small cell facilities.

### **Preemption of Local Authority**

The City’s ability to regulate small cell facilities is limited by state and federal regulations. State and federal laws were enacted to streamline the rollout of 5G networks and for the express purpose of restricting the ability of local communities to prevent installation of 5G infrastructure. These regulations are primarily found in Ohio Revised Code Chapter 4939, 47 U.S.C. §§ 253(a) and 332(c)(7)), and related FCC rules and regulations. Together, these rules give telecom providers broad rights to locate their facilities in the public right-of-way, including on City-owned poles. The rules establish “shot clocks” that require cities to approve small cell facilities within statutory time limits. And, finally, the rules limit the fees and conditions that may be placed on small cell facilities. Cities have a general ability to issue design guidelines for small cell facilities and to regulate placement based on right of way management principles.

Federal law and 47 U.S.C. 332(c)(7) in particular sharply limit the City’s ability to discriminate among wireless service providers or to adopt regulations that would have the effect of prohibiting wireless services. In practice, these limitations mean that the City cannot prohibit the construction of small cell facilities in the right-of-way. Federal law further requires the City to respond to requests to construct small cells in a timely manner and denials must be in writing with supporting evidence. Finally, federal regulations specifically prohibit the City from regulating on the basis of the environmental effects of RF transmissions that are authorized by FCC regulations.

The FCC’s small cell mandates were expanded in the fall of 2018 to further limit local governments’ ability to regulate 5G infrastructure. A new order reaffirmed the FCC’s position that 5G RF emissions remain subject to the FCC’s exclusive jurisdiction.<sup>1</sup> A number of cities sued the FCC challenging this action and its earlier small cell orders, but the Ninth Circuit upheld the FCC’s orders and left undisturbed the FCC’s preemption of local authority.<sup>2</sup>

---

<sup>1</sup> FCC 18-133, Declaratory Ruling and Third Report and Order, September 226, 2018 (effective January 15, 2019), Article III, Paragraph 33, p. 17, and fn. 72.

<sup>2</sup> *City of Portland v. United States*, 969 F.3d 1020, (9th Cir.2020).

In 2018, the Ohio General Assembly also updated Ohio Revised Code Chapter 4939, “Use of Municipal Right of Way,” to place further restrictions on local governments’ ability to prohibit or regulate the placement of small cell facilities in the right of way. HB 478 not only confirmed that local governments must comply with federal requirements, it placed more stringent limits on their ability to regulate wireless providers. To this end, the bill established shorter timing requirements (the “shot clock”) for the approval of small cell facilities and further narrowed the scope of local governments’ ability to regulate them.

Notably, the General Assembly made these changes after the City and several other Ohio municipalities sued the State of Ohio to invalidate an earlier bill (SB 331) that imposed even greater restrictions on cities’ ability to regulate small cell facilities. Though the City and other municipalities were successful in obtaining injunctions to block those earlier restrictions, it did not prevent the state from adopting HB 478, which did not suffer from the same legal infirmities as the one that was enjoined. Still, the City Solicitor’s Office was a leader in negotiations with the telecom industry and helped to win significant concessions compared to SB 331.

### **Local Regulations**

Notwithstanding the state and federal law that limit the City’s regulation of small cell facilities, the City does retain the authority to regulate certain aspects of small cell facilities. The City may still address aesthetics and pedestrian/traffic circulation management concerns. It may also require compliance with general right-of-way management policies.

The City currently regulates small cell facilities through Cincinnati Municipal Code Chapter 719 and related small cell design guidelines.<sup>3</sup> These regulations were developed in 2016 following an intensive public review process that was assisted by expert legal counsel retained by the City and involved a number of industry stakeholders. The resulting regulations are intended to maximize the City’s regulatory authority consistent with state and federal law and also to ensure that wireless providers have fair and reasonable access to the City right-of-way. In addition to these regulations, there are certain regulations found in the City’s zoning code that regulate the installation of wireless facilities on private property.<sup>4</sup>

Finally, the Administration, in consultation with the Law Department, has developed amendments to these regulations to ensure they are consistent with current state and federal requirements without relinquishing any of the City’s regulatory authority. A proposed ordinance containing these amendments has been transmitted in connection with this report, and the Administration recommends its passage.

---

<sup>3</sup> Interim Detailed Design Guidelines for Wireless Communications Facilities in the Right of Way, approved by City Council September 28, 2016, modified by DOTE July 31, 2018.

<sup>4</sup> CMC 1419-33.



Date: August 3, 2021

To: Major Projects & Smart Government 202102490  
From: Paula Boggs Muething, City Manager  
Subject: Pedestrian Safety & Traffic Calming Presentation

---

Attached is a presentation on DOTE's Pedestrian Safety & Traffic Calming Process and Priority Projects.

cc: John S. Brazina, Director, Transportation and Engineering

# Pedestrian Safety & Traffic Calming

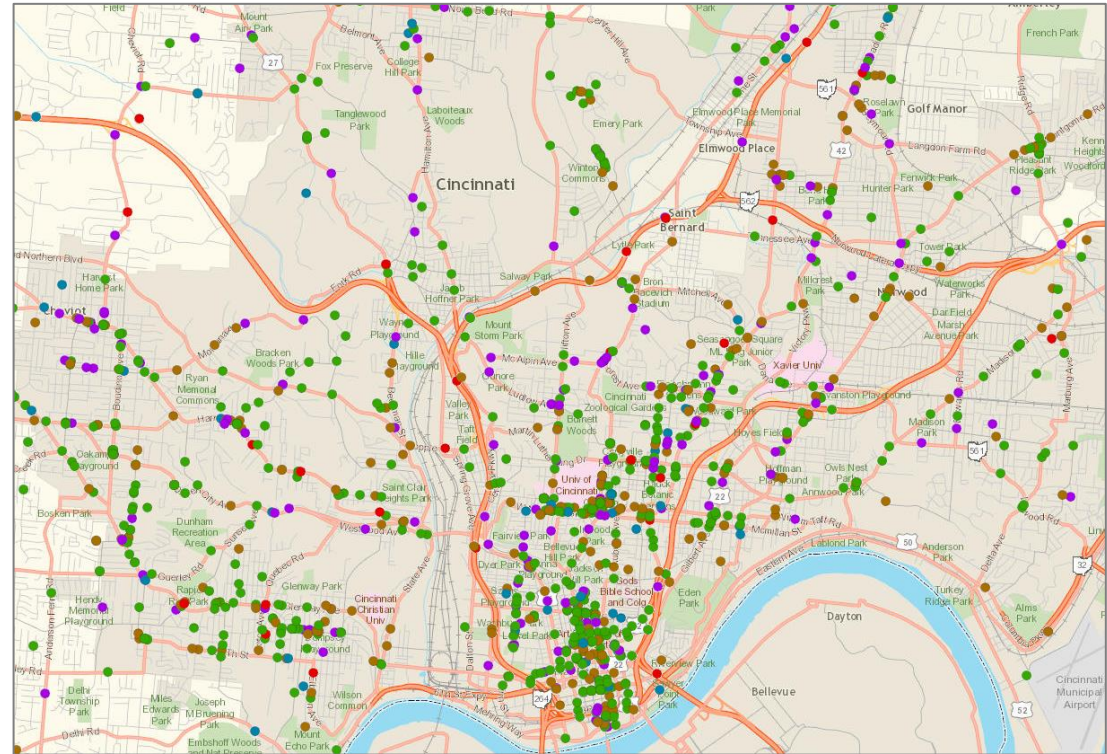
Process and Priority Projects

# Pedestrian Safety Program

The program currently has two components:

- “Major” projects: DOTE uses crash data and community feedback to identify priority streets with multiple hotspots, and to develop a better street design that will calm traffic and significantly reduce pedestrian and vehicular crashes.
- “Minor” projects: DOTE works with community councils to identify locations for small improvements like updating signage and restriping crosswalks.

Pedestrian crashes, 2018-2021



# Major Projects

## Streets with multiple hotspots

- DOTE uses pedestrian crash data, vehicular crash data, and community feedback to maintain a list of priority locations in need of improvement.
- Improvements on these 9 streets will have the most significant impact on reducing future pedestrian crashes citywide.

Location	Pedestrian Crashes				Vehicular Crashes	DOTE Recommendation	Est Cost
	2019	2020	2021	Total	2019-2021		
6XX - 19XX Linn	5	5	2	12	113	DOTE has worked with the community to develop 3 right-sizing options. Funding is needed for design and then construction.	Design: \$500,000; Construction: \$6,300,000
35XX - 37XX Warsaw	6	4	1	11	67	A preferred option has been vetted with the community. Funding is needed for construction	Design: \$400,000; Construction: \$4,400,000
48XX - 49XX Winneste	5	3	3	11	18	DOTE is piloting 4 sets of temporary, rubber speed cushions in this corridor July through November. Speed cushions function as speed humps but allow emergency vehicles to pass unimpeded. If the pilot is successful, funding will be needed to install permanent cushions.	Design: \$5,000; Construction: \$100,000
14XX - 25XX Harrison	7	10	3	20	586	DOTE is working with the community to determine if right-sizing the street is acceptable and to develop a preferred alternative.	Scope and costs unknown at this time.
34XX - 63XX Glenway	8	10	5	23	1238	DOTE could investigate right-sizing the street.	Scope and costs unknown at this time.
33XX - 47XX Reading	6	7	1	14	658	DOTE could investigate right-sizing the street.	Scope and costs unknown at this time.
70XX - 77XX Reading	5	5	0	10	220	DOTE could investigate right-sizing the street.	Scope and costs unknown at this time.
30XX - 33XX Burnet	6	3	1	10	102	DOTE could investigate right-sizing the street.	Scope and costs unknown at this time.
29XX - 35XX Boudinot	5	4	1	10	218	DOTE could investigate right-sizing the street.	Scope and costs unknown at this time.

# Minor Projects

## Small-scale community council requests

- DOTE reached out to community councils to ask for priority lists.
- Cost estimates are currently being developed for these requests (new signage, restriped crosswalks etc).



# New for FY22 – Traffic Calming

## New focus on near-term, affordable, traffic calming on major streets

- DOTE plans to realign the pedestrian safety and street calming programs to better address community needs.
- DOTE will analyze pedestrian crash data and work with community councils to identify major streets where speed cushions and similar tools can be installed to calm traffic and improve pedestrian safety.
- DOTE will present a list of priority projects to Council in September.



# Questions?

August 2, 2021

**To:** Mayor and Members of City Council 202102567

**From:** Paula Boggs Muething, City Manager

**Subject: Emergency Ordinance—Modifying Article XXI of the Administrative Code Transferring Zoning Administration Functions from the Department of Buildings and Inspections to the Department of City Planning and Engagement**

---

Transmitted herewith is an emergency ordinance captioned as follows:

**MODIFYING** Article XXI, “Department of Buildings and Inspections,” of the Administrative Code of the City of Cincinnati by **AMENDING** Section 2, “Duties of Director of Buildings and Inspections,” Section 3, “Division of Permits and Inspections,” and Section 5, “Division of Property Maintenance Code Enforcement,” and by **REPEALING** Section 4, “Urban Conservator”; and **MODIFYING** Article XXV, “Department of City Planning and Engagement,” by **AMENDING** Section 2, “Duties of the Director of the Department of City Planning and Engagement,” and by **ADDING** new Section 3, “Zoning Administrator,” and new Section 4, “Urban Conservator,” to transfer the roles of Zoning Administrator and Urban Conservator, and subordinate employees, from the Department of Buildings and Inspections to the Department of City Planning and Engagement, in order to facilitate the oversight and efficient integration of zoning administration and urban conservation responsibilities into the operations of the Department of City Planning and Engagement.

The zoning administration function is being transferred from the Department of Buildings and Inspections (B&I) to the Department of City Planning and Engagement. This transfer will provide more efficient oversight and increase collaboration and integration of Zoning Administration, and the subordinate employees thereof, into the operations of the Department of City Planning and Engagement. The purpose of this ordinance is to amend the Administrative Code to reflect the transfer of duties associated with zoning administration from B&I to the Department of City Planning and Engagement.

A separate ordinance will be presented to the City Council to authorize the transfer of the sum of \$574,760 within the General Fund from the B&I to the Department of City Planning and Engagement.

The reason for the emergency is the immediate need to begin the process for integrating the zoning administration and urban conservation responsibilities into the Department of City Planning and Engagement. The Administration recommends passage of this Emergency Ordinance.



EMERGENCY

City of Cincinnati

MSS  
AWB

An Ordinance No. \_\_\_\_\_

- 2021

**MODIFYING** Article XXI, "Department of Buildings and Inspections," of the Administrative Code of the City of Cincinnati by **AMENDING** Section 2, "Duties of Director of Buildings and Inspections," Section 3, "Division of Permits and Inspections," and Section 5, "Division of Property Maintenance Code Enforcement," and by **REPEALING** Section 4, "Urban Conservator"; and **MODIFYING** Article XXV, "Department of City Planning and Engagement," by **AMENDING** Section 2, "Duties of the Director of the Department of City Planning and Engagement," and by **ADDING** new Section 3, "Zoning Administrator," and new Section 4, "Urban Conservator," to transfer the roles of Zoning Administrator and Urban Conservator, and subordinate employees, from the Department of Buildings and Inspections to the Department of City Planning and Engagement, in order to facilitate the oversight and efficient integration of zoning administration and urban conservation responsibilities into the operations of the Department of City Planning and Engagement.

WHEREAS, the efficient oversight and integration of the Zoning Administrator and Urban Conservator, and the subordinate employees of each, into the operations of the Department of City Planning and Engagement, to enhance that Department's role in zoning and urban conservation responsibilities, requires modification of the Administrative Code of the City of Cincinnati; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio, with three-fourths of its members concurring:

Section 1. That Sections 2, 3, and 5 of Article XXI, "Department of Buildings and Inspections," of the Administrative Code are hereby amended as follows:

Section 2. - Duties of Director of Buildings and Inspections

The director of the department of buildings and inspections shall be certified by the board of building standards for the state of Ohio as a building official for residential and non-residential purposes, or shall be certified to serve as an interim building official. The director shall also be a registered professional engineer or registered architect in the state of Ohio, or be eligible for registration. The director of the department of buildings and inspections shall be the chief building official for the city for the purposes of administering and adjudicating orders under the Cincinnati building code, under revised code ~~chapter~~ chapters 3781, ~~revised code chapter~~ and 3791, and the rules made under them, including the Ohio building code and the residential code of Ohio, and under all other related building and housing codes.

### Permits and Inspections.

The director of buildings and inspections shall oversee the administration and enforcement of all building, housing, and related codes and ordinances under the jurisdiction of the permits and inspections deputy as they relate to the construction and erection of new structures, the renovation of existing structures, the construction and erection of alterations and additions to existing structures, and other alterations and improvements to real property; shall oversee the building permitting and building inspections functions of the city; ~~shall oversee the administration and enforcement of all zoning regulations under the jurisdiction of the zoning administrator; shall oversee the protection and preservation of the city's historic assets and historic districts, and the administration and enforcement of the city's historic preservation regulations;~~ shall serve as the floodplain administrator and oversee the administration and enforcement of floodplain laws and regulations; and shall perform other duties assigned by the city manager or by ordinance of the council.

### Property Maintenance Code Enforcement.

The director of buildings and inspections shall oversee the administration and enforcement of the property maintenance-related provisions of the housing, building, ~~zoning~~, and related codes and ordinances under the jurisdiction of the property maintenance deputy as they relate to the maintenance of existing structures and existing uses of land; oversee the administration and enforcement of the city's weed, high grass, and litter regulations contained in Municipal Code Chapters 714, "Littering," and 731, "High Grass"; and shall perform other duties assigned by the city manager or by ordinance of the council.

The director of building and inspections and those designated inspectors and employees, when enforcing the provisions of ordinances or laws within the scope of their duties related to enforcement of the city's weed, high grass, and litter regulations, shall be vested with the powers of police officers of the city.

### Section 3. - Division of Permits and Inspections

The director of the department of buildings and inspections shall establish a division of permits and inspections, to be ~~co-~~administered by a permits and inspections deputy ~~and a zoning administrator, each of which shall be~~ subject to the supervision and control of the director of the department of buildings and inspections. The division may also contain other subordinate officers and employees appointed to serve under the direction and supervision of the permits and inspections deputy ~~and the zoning administrator~~. The permits and inspections deputy, ~~the zoning administrator~~, and those designated officers and employees, when enforcing the provisions of ordinances or laws within the scope of their duties, shall be vested with the powers of police officers of the city.

### Permits and Inspections Deputy:

The permits and inspections deputy shall be certified by the board of building standards for the state of Ohio as a building official for residential and non-residential purposes, or shall

be certified to serve as an interim building official. It shall be the duty of the permits and inspections deputy to perform building permitting and building inspection functions of the city; administer and enforce all building and housing code regulations as they relate to the construction and erection of new structures, the renovation of existing structures, the construction and erection of alterations and additions to existing structures, and other alterations and improvements to real property; and perform other duties assigned by the director, the city manager, or by ordinance of the council. The permits and inspections deputy shall serve as the chief building official for the city, within the scope of the foregoing duties, in the event of a conflict of interest or the unavailability of the director of buildings and inspections.

**Zoning Administrator:**

~~The zoning administrator shall be an experienced city planner, architect, design professional, attorney licensed in the state of Ohio, or a person with intimate knowledge of, and experience in, the administration and enforcement of zoning codes. It shall be the duty of the zoning administrator to review and approve applications for building permits and other appropriate applications under his or her jurisdiction to determine their compliance with the city's zoning regulations; to administer and enforce the city's zoning regulations; to oversee and manage the office of the urban conservator and other officers and employees of the permits and inspections division charged with administration and enforcement of zoning regulations; and all other duties assigned by the director, the city manager, or by ordinance of the council.~~

**Sec. 5. - Division of Property Maintenance Code Enforcement.**

The director of buildings and inspections shall establish a division of property maintenance code enforcement, to be administered by a property maintenance deputy, who shall be subject to the supervision and control of the director of buildings and inspections. The division of property maintenance code enforcement shall consist of the property maintenance deputy and other inspectors and employees appointed or assigned to serve under the direction and supervision of the property maintenance deputy. The property maintenance deputy, and those designated inspectors and employees, when enforcing the provisions of ordinances or laws within the scope of their duties, shall be vested with the powers of police officers of the city.

**Property Maintenance Deputy:**

The property maintenance deputy shall be certified by the board of building standards for the state of Ohio as a building official for residential and non-residential purposes, or shall be certified to serve as an interim building official. It shall be the duty of the property maintenance deputy to administer and enforce all property maintenance and related provisions of the housing, building, zoning, and other codes and ordinances under his or her jurisdiction as they relate to the maintenance of existing structures and existing uses of land; exercise the authority to vacate buildings; condemn unsafe buildings; conduct summary abatement and demolition of public nuisance buildings, and perform related

activities; issue permits relating to property maintenance orders; order serious safety hazards corrected on existing buildings and structures; and perform other duties assigned by the director, the city manager, or by ordinance of the council. The property maintenance deputy shall serve as the chief building official for the city, within the scope of the foregoing duties, in the event of a conflict of interest or the unavailability of the director of buildings and inspections.

Section 2. That Section 2 of Article XXV, “Department of City Planning and Engagement,” of the Administrative Code is hereby amended as follows:

**Section 2. - Duties of the Director of the Department of City Planning and Engagement.**

The director of the department of city planning and engagement shall direct the urban planning function of the city of Cincinnati; ~~shall~~ advise the council and the city manager on matters affecting the physical improvement and development of the city; ~~shall~~ provide professional services and guidance to the city planning commission as necessary to assist it in the performance of all duties and responsibilities conferred upon it by the charter; ~~work in cooperation with the office of the urban conservator to recommend and effectuate the in the designation of historic assets and historic districts~~ develop the city’s comprehensive plan, neighborhood plans, and other plans, and oversee their implementation; develop and recommend amendments to the city’s official zoning map, zoning regulations, and other land use regulations; oversee the administration and enforcement of all zoning regulations under the jurisdiction of the zoning administrator; oversee the protection and preservation of the city’s historic assets and historic districts, and the administration and enforcement of the city’s historic preservation regulations; serve as the city’s liaison to community councils, citizens, and businesses on all city planning and land use related matters; and ~~shall~~ perform other duties assigned by the city manager or by ordinance of council. The director shall submit to the city planning commission for review an annual department work program, which shall guide the work of the department and the commission for the year ahead within the budget recommended by the commission and approved by the council.

Section 3. That new Sections 3 and 4 are hereby added to Article XXV, “Department of City Planning and Engagement,” of the Administrative Code:

**Section 3. - Zoning Administrator**

There shall be an office of zoning administration within the department of city planning and engagement to be administered by a zoning administrator, subject to the supervision and control of the director of the department of city planning and engagement. The office may also contain other subordinate officers and employees appointed to serve under the direction and supervision of the zoning administrator. The zoning administrator and those designated officers and employees, when enforcing the provisions of ordinances or laws

within the scope of their duties, shall be vested with the powers of police officers of the city.

The zoning administrator shall be an experienced city planner, architect, design professional, attorney licensed in the state of Ohio, or a person with intimate knowledge of, and experience in, the administration and enforcement of zoning codes. It shall be the duty of the zoning administrator to review and approve applications for building permits and other appropriate applications to determine their compliance with the city's zoning regulations; administer and enforce the city's zoning regulations; oversee and manage the office of the urban conservator and other officers and employees of the office of the zoning administrator charged with administration and enforcement of zoning regulations; and perform all other duties assigned by the director, the city manager, or by ordinance of the council.

#### Section 4. - Urban Conservator.

There shall be an office of historic preservation within the department of city planning and engagement to be administered by an urban conservator, subject to the supervision and control of the director of city planning and engagement and the zoning administrator. The office of historic preservation shall include an urban conservator and other subordinate employees appointed by the director to serve under the direction and control of the urban conservator.

The urban conservator shall meet the secretary of the interior's professional qualification standards for preservation professionals under 36 C.F.R. Part 61 or any successor provision. It shall be the duty of the urban conservator to administer the city's historic preservation regulations; maintain and administer the city's historic inventory and conservation guidelines; review and consider the appropriateness of alterations and demolitions of the city's historic assets and properties located within historic districts; conduct environmental reviews to determine impacts on historic assets and historic districts as required by state and federal funding programs; serve as the city's internal and external liaison on all historic preservation matters; advise the historic conservation board on matters that come before it; serve as an advocate for the protection and preservation of the city's historic assets and historic districts; and perform other duties assigned by the city manager, director, zoning administrator, or by ordinance of the council.

Section 4. That existing Sections 2, 3, 4, and 5 of Article XXI, "Department of Buildings and Inspections," of the Administrative Code, and existing Section 2 of Article XXV, "Department of City Planning and Engagement," of the Administrative Code are hereby repealed.

Section 5. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 4 hereof, including causing the transfer of personnel from the Department of Buildings and Inspection to the Department of City Planning and Engagement the target date of October 3, 2021.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to begin the process for integrating the zoning administration and urban conservation responsibilities into the operations of the Department of City Planning and Engagement to enhance that department's role in these City functions.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
New language is underscored. Deleted language is struck through.