

The Charlevoix City Council met on Monday, June 1, 2020 with Mayor Luther Kurtz presiding. All Councilmembers were present. The following is an excerpt from the official records of said meeting:

**CITY OF CHARLEVOIX  
ORDINANCE NO. 820 of 2020**

AN ORDINANCE TO AMEND TITLE XV, CHAPTER 153 OF THE CHARLEVOIX CITY CODE TO ADD SECTION 153.125(F) TO REGULATE SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT; TO PROVIDE FOR SEVERABILITY; TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND TO PROVIDE AN EFFECTIVE DATE

**THE CITY OF CHARLEVOIX ORDAINS:**

**SECTION 1. Title XV, Chapter 153, Section 153.125(F) of the City of Charlevoix Code is hereby added to read as follows:**

- (1) This ordinance shall be known and may be cited as the "small wireless communications facilities deployment ordinance."
- (2) Definitions. For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**ACT** means the small wireless communications facilities deployment act, 2018 PA 365, MCL 460.1301, et seq., as the same may be amended from time to time.

**ANTENNA** means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

**APPLICANT** means a wireless provider or wireless infrastructure provider that submits an application described in this ordinance.

**AUTHORITY**, unless the context implies otherwise, means the City of Charlevoix, to the extent authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application described in this ordinance. Authority does not include any of the following:

- (i) A municipally owned electric utility.
- (ii) An investor-owned utility whose rates are regulated by the Michigan Public Service Commission.
- (iii) A state court having jurisdiction over an authority.

**AUTHORITY POLE** means a utility pole owned or operated by an authority and located in the ROW.

**COLOCATE OR COLLOCATION** means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning. Colocate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

**FEE** means an authority one-time per small cell site charge for application processing.

**HISTORIC DISTRICT** means an officially designated historic district.

**MAKE-READY WORK** means work necessary to enable an authority pole or utility pole to support collocation, which may include modification or replacement of utility poles or modification of lines.

**MICRO WIRELESS FACILITY** means a small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

**PUBLIC RIGHT-OF-WAY OR ROW** means the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:

- (i) A private right-of-way.
- (ii) A limited access highway.
- (iii) Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.
- (iv) Railroad infrastructure.

**RATE** means an authority annual charge per site.

**SMALL CELL WIRELESS FACILITY** means a wireless facility that meets both of the following requirements:

- (i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.
- (ii) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: 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.

**UTILITY POLE** means a pole or similar structure that is or may be used to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

**WIRELESS FACILITY** means wireless equipment at a fixed location that enables the provision of wireless services between user equipment and

a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include any of the following:

- (i) The structure or improvements on, under, or within which the equipment is collocated.
- (ii) A wireline backhaul facility.
- (iii) Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

**WIRELESS PROVIDER** is a regulated provider of telecommunications services and a **WIRELESS INFRASTRUCTURE PROVIDER** is an installer of wireless equipment at small cell sites and, both terms are interchangeable terms for purposes of this ordinance. Wireless provider does not include an investor-owned utility whose rates are regulated by the MPSC.

**WIRELESS SERVICES** means any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

**WIRELESS SUPPORT STRUCTURE** means a freestanding structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

**WIRELINE BACKHAUL FACILITY** means a facility used to transport services by wire or fiber-optic cable from a wireless facility to a network.

(3) Scope of authority.

- (a) Except as provided in this ordinance or the Act, the Authority shall not prohibit, regulate, or charge for the collocation of small cell wireless facilities.
- (b) The approval of a small cell wireless facility under this ordinance authorizes only the collocation of a small cell wireless facility and does not authorize either of the following:
  1. The provision of any services.
  2. The installation, placement, modification, maintenance, or operation of a wireline in the ROW.
- (c) The terms of this section do not permit the wireless provider to operate a cable system or to provide cable service, as those terms are defined by Section 602 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Section 522), or install any wires or facilities that are required to be permitted under the METRO Act, Public Act 48 of 2002, MCL 484.310, including any part of a small cell wireless facility constituting wireline telecommunication facilities.

(4) Small Cell Row Access; Permitted Use; Height; Underground, Downtown, Residential and Historic Districts.

- (a) This subsection applies only to activities of a wireless provider within the public right-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.
- (b) The Authority shall not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation, or maintenance of utility poles or the collocation of small cell wireless facilities.
- (c) The Authority shall not charge a wireless provider an annual rate more than:
  1. \$20.00 annually, unless subdivision 2 applies.
  2. \$125.00 annually, if a new utility pole or wireless support structure was erected at a new site by or on behalf of the wireless provider on or after the effective date of this act. This subdivision does not apply to the replacement of an existing utility pole that was not designed to support small cell wireless facilities.

Every 5 years after the effective date of the Act, the maximum rates are increased by 10% and rounded to the nearest dollar.
- (d) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except for new small cell dedicated utility poles installed and operational in the ROW before the effective date of this ordinance or related agreements, which shall remain in effect for the duration of the ordinance or agreement.
- (e) Except as set forth in § 153.125(F)(5) or (6), and as limited by this subsection, a wireless provider may collocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW as a permitted use not subject to zoning regulation if it complies with all other sections of this ordinance and if:
  1. A utility pole in the ROW installed or modified on or after the effective date of this ordinance shall not exceed 40 feet above ground level, unless a taller height is agreed to by the Authority.
  2. A small cell wireless facility in the ROW installed or modified after the effective date of this ordinance shall not extend more than 5 feet above a utility pole or wireless support structure on which the small cell wireless facility is collocated.

Such structures and facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel or public safety on the ROW or obstruct the legal use of the Authority's ROW or uses of the ROW by other utilities and communications service providers.

- (f) A proposed utility pole or other support structure that exceeds the height limits under § 153.125(F)(4)(e), is subject to zoning review.
  - (g) Undergrounding: A wireless provider shall comply with reasonable and nondiscriminatory requirements including concealment measures that prohibit communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities, if:
    - 1. The Authority has required all cable and utility facilities, other than authority poles, along with any attachments, or poles used for street lights, traffic signals, or other attachments necessary for public safety, to be placed underground by a date that is not less than 90 days before the submission of the application; and
    - 2. The Authority does not prohibit replacement of authority poles by a wireless provider in the designated area.
    - 3. A wireless provider may apply for a waiver of the undergrounding requirements.
  - (h) Historic, Downtown and Residential Districts: A wireless provider shall comply with written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral designs or concealment measures in a historic district, downtown district, or residential zoning district. Such requirement shall not have the effect of prohibiting any wireless provider's technology. Any such design or concealment measures are not included in size restrictions in the definition of small wireless facility in this section.
  - (a) Aesthetic requirements: Wireless Providers shall install, modify, collocate or otherwise provide all wireless facilities, equipment, poles, support structures and all other related wireless objects in a manner, size and appearance that is consistent and in conformity with the existing requirements and existing practices in fact, pertaining to such districts as defined by the applicable ordinances, rules and codes of this community and the applicable rules and laws of this State, in such fashion as to create the least negative impact on the district as possible. Such accommodations may include use of similar height, materials, color, design, number and appearance of other similar structures utilized by other occupiers of the ROW and public spaces.
    - 1. Collocation including replacement of existing poles or support structures is strongly encouraged over the installation of additional new poles or support structures in the ROW.
    - 2. Placement of all equipment inside the pole or support structure is favored over placement outside the pole, including ground mountings.
    - 3. Smallest equipment, antennas and poles and support structures feasible is preferred.
    - 4. Camouflaging, stealth or concealment elements are preferred.
    - 5. Installations generally are favored in the following zoning districts, in the following order of preference:
      - i. 1st Preference: Industrial
      - ii. 2nd Preference: Commercial
      - iii. 3rd Preference: Residential
      - iv. 4th Preference: Historic
      - v. 5th Preference: Environmentally sensitive areas including nature and wetland preservation sites
    - 6. Disagreements between the provider and Authority on specific aesthetics issues shall be addressed by the City Council upon timely written request of the provider. Staff and City Council may consider incentives favoring installations in preferred districts.
  - (b) All wireless providers shall repair all damage to the ROW caused by the activities of the wireless provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and, to return the ROW to its original condition. Following 60 days' written notice, the Authority may make those repairs and charge the wireless provider the cost of the repairs.
- (5) Provider and Authority Responsibilities; Application Information; Shot Clocks; Tolling; Deemed Approved; Basis for Denial; Resubmittal; Batch Applications; Application Fees; Micro Wireless Facility Exemption; Alternative Siting; Decommissioning Sites:
- (a) This subsection applies to activities of a wireless provider within the public right-of-way.
  - (b) Except as otherwise provided in this subsection or the Act, a wireless provider shall seek an Authority ROW access permit to collocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility will be collocated as required of all ROW users. The processing of an application for an Authority ROW access permit is subject to all of the following:
    - 1. Unless physically or technically infeasible, all small wireless facilities shall be constructed to accommodate two or more users. Any wireless provider must openly allow another provider to collocate upon its wireless facility under rates and conditions that are acceptable within the industry to promote collocation. Collocation of small cell wireless facilities is strongly encouraged.
    - 2. In-kind contributions to the Authority are not permitted in lieu of rates and fees described above unless all parties voluntarily agree in furtherance of the interests of both.
    - 3. The Applicant shall provide all the information and documentation required by the Authority to enable the Authority to make an informed decision with regard to its criteria for authorizing ROW access including the following:
      - i. A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless

- facility;
  - ii. Proof of notification to every other affected authority and all necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained;
  - iii. An attestation that the small cell wireless facilities will be operational for use by a wireless services provider within 1 year after the permit issuance date. Failure to abide by this term shall result in termination of any permit issued in reliance on such attestation.
4. Within 25 days after receiving an initial application, the Authority shall notify the Applicant in writing whether the application is complete. If incomplete, the notice will delineate all missing documents or information. The notice tolls the running of the time for approving or denying an application under § 153.125(F)(5)(b)6.
5. If the Applicant makes a supplemental submission in response to the Authority's notice of incompleteness, the Authority will so notify the Applicant in writing within 10 days, delineating the previously requested and missing documents or information. The time period for approval or denial is tolled in the case of second or subsequent notices under the procedures identified in § 153.125(F)(5)(b)4.
6. The Authority shall approve or deny the application and notify the Applicant in writing within the following period of time after the application is received:
- i. Collocation Shot Clock: For an application for the collocation of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:
    - a. Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
    - b. Add 15 days if the Authority notifies the Applicant in writing that an extension is needed and the reasons for the extension before the otherwise applicable 60-day or 75-day time period under this subsection elapses.
  - ii. New or Replacement 40' Pole and Limited Equipment: For an application for a new or replacement utility pole that meets the height requirements of § 153.125(F)(4)(e) and associated small cell facility, 90 days, subject to the following adjustments:
    - a. Add 15 days if an application from another wireless provider was received within 1 week of the application in question.
    - b. Add 15 days if, a timely extension is requested.
    - c. Deemed Approved: A completed application is considered to be approved if not timely acted upon by the Authority and, subject to the condition that the Applicant provide the Authority not less than 7 days' advance written notice that the Applicant will be proceeding with the work pursuant to this automatic approval.
7. Basis for Denial: The Authority may deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in § 153.125(F)(4)(e) if the proposed activity would do any of the following:
- i. Materially interfere with the safe operation of traffic control equipment;
  - ii. Materially interfere with sight lines or clear zones for transportation or pedestrians;
  - iii. Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101- 336, or similar federal, state, or local standards regarding pedestrian access or movement.
  - iv. Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of an authority.
  - v. With respect to drainage infrastructure under the jurisdiction of an authority, either of the following:
    - a. Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
    - b. Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.
  - vi. Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.
  - vii. Fail to comply with all other applicable codes.
  - viii. Fail to comply with sections § 153.125(F)(4)(g) or (h) relating to Undergrounding and Historic, Downtown, and Residential districts.
  - ix. Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities

applicable in a historic district or other designated area, as specified in an ordinance or otherwise and non-discriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the Authority.

8. Reasons for Denial; Resubmission and 30 Day Shot Clock: If the completed application is denied, the notice shall explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The Applicant may cure the deficiencies identified by the Authority and resubmit the application within 30 days after the denial without paying an additional application fee. The Authority shall approve or deny the revised application within 30 days. The Authority shall limit its review of the revised application to the deficiencies cited in the denial.
  9. Batch Applications: An applicant may file an application and receive a single permit for the collocation of up to 20 substantially similar small cell wireless installations. The Authority may approve or deny 1 or more small cell wireless facilities included in such consolidated application.
  10. Approval of an application authorizes the wireless provider to undertake the installation, collocation and maintenance of such facilities.
  11. The Authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of utility poles on which small cell wireless facilities will be colocated.
  12. The Authority and an applicant may extend a time period under this subsection by mutual agreement.
- (c) Application Fee for a permit under § 153.125(F)(5)(b) shall not exceed the lesser of the following:
1. \$200.00 for each small cell wireless facility alone.
  2. \$300.00 for each small cell wireless facility and a new utility pole to which it will be attached.

Every 5 years after the effective date of the Act, the maximum fees are increased by 10% and rounded to the nearest dollar.

- (d) The Authority may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of § 153.125(F)(5)(b)7.
  - (e) Micro Wireless Facility Exempt: The Authority shall not require a permit or any other approval or require fees or rates for ordinance compliant replacement, maintenance or operation of a small cell wireless facility or ordinance compliant installation, replacement, maintenance or operation of a micro wireless facility that is suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.
  - (f) Alternate Siting: Upon receipt of an application to place a new utility pole, the Authority may propose an alternate location within the ROW or on property or structures owned or controlled by the Authority within 75 feet of the proposed location to either place the new utility pole or collocate on an existing structure. The Applicant shall use the alternate location if, as determined by the Applicant, the Applicant has the right to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs.
  - (g) Decommissioning Sites: A wireless provider shall notify the Authority in writing before discontinuing use of a small cell wireless facility, utility pole, or wireless support structure. The notice shall specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. The wireless provider shall return the property to its pre-installation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the Authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this subsection for a small cell wireless facility expires upon removal of the small cell wireless facility.
  - (h) A wireless provider shall obtain a permit for any work that will affect traffic patterns or obstruct vehicular or pedestrian traffic in the ROW.
- (6) Zoning Review for Non-Permitted Uses.
- (a) This subsection applies to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under § 153.125(F)(4)(e), and that take place within or outside the public right-of-way:
    1. The modification of existing or installation of new small cell wireless facilities.
    2. The modification of existing or installation of new wireless support structures used for such small cell wireless facilities.
  - (b) The processing of an application for a zoning approval is subject to all of the following requirements:
    1. Within 30 days after receiving an application under this section, the Authority shall notify the Applicant in writing whether the application is complete. If the application is incomplete, the notice shall clearly and specifically delineate all missing documents or information. The notice tolls the running of the 30-day period.
    2. The running of the time period tolled under § 153.125(F)(6)(b)1 resumes when the Applicant makes a supplemental submission in response to the Authority's notice of incompleteness. If the Applicant makes a supplemental submission in response to the Authority's notice of incompleteness, the Authority will so notify the Applicant in writing within 10 days, delineating the previously requested and missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in subdivision § 153.125(F)(6)(b)1. Second or subsequent

notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

3. Modification of Support Structure or Collocation or Installation of Wireless Facilities Shot Clock 90 Days – New Support Structure Shot Clock 150 Days; Modification by Agreement; Deemed Approved: The Authority shall approve or deny the application and notify the Applicant in writing within 90 days after an application for a modification of a wireless support structure or installation of a small cell wireless facility is received or 150 days after an application for a new wireless support structure is received.
    - i. The time period for approval may be extended by mutual agreement between the Applicant and Authority.
    - ii. If the Authority fails to comply with this subdivision, the application is considered to be approved subject to the condition that the Applicant provide the Authority not less than 15 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.
  4. The Authority may deny an application if all of the following apply:
    - i. The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.
    - ii. There is a reasonable basis for the denial.
    - iii. The denial would not discriminate against the Applicant with respect to the placement of the facilities of other wireless providers.
- (c) The Authority's review of an application for a zoning approval is subject to all of the following requirements:
1. Applicant Presumed Reasonable: An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities or wireless support structures. The Authority may consider the height of such structures in its zoning review, but shall not discriminate between the Applicant and other communications service providers.
  2. The Authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:
    - i. The need for a wireless support structure or small cell wireless facilities.
    - ii. The Applicant's service, customer demand for the service, or the quality of service.
  3. Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.
  4. Any spacing, setback, or fall zone requirement shall be substantially similar to a spacing, setback, or fall zone requirement imposed on other types of commercial structures of a similar height.
- (d) Application Fees:
1. \$1,000.00 for a new wireless support structure or modification of an existing wireless support structure.
  2. \$500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility
- (e) All zoning approval is void if the wireless provider fails to commence construction within 1 year of the grant of same, unless the Authority and the Applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. The wireless provider may reapply for a zoning approval.
- (f) A wireless provider may voluntarily request that a zoning approval be terminated.
- (g) The Authority shall not institute a moratorium on either of the following:
1. Filing, receiving, or processing applications for zoning approval.
  2. Issuing approvals for installations that are not a permitted use.
- (h) The Authority may revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated wireless support structure fail to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

(7) Authority owned Poles; Rates; Terms

- (a) The Authority shall not enter into an exclusive arrangement with any person for the right to attach to authority poles. A person who purchases, controls, or otherwise acquires an authority pole is subject to the requirements of this subsection.
- (b) Rate: The rate for the collocation of small cell wireless facilities on authority poles shall be nondiscriminatory regardless of the services provided by the collocating person. The rate shall not exceed \$30.00 per year per authority pole. Every 5 years after the effective date of the Act, the maximum rate then authorized under this subsection is increased by 10% and rounded to the nearest dollar. This rate for the collocation of small cell wireless facilities on authority poles is in addition to any rate charged for the use of the ROW under § 153.125(F)(4).

- (c) All greater rates and fees in current agreements shall be modified within 90 days of application receipt, so as not to exceed the fees provided here, except with respect to wireless facilities on authority poles installed and operational before the effective date of this ordinance or any related agreement, which shall remain in effect for the duration of the ordinance or agreement.
  - (d) Within 90 days after receiving the first request to collocate a small cell wireless facility on an authority pole, the Authority shall make available, through ordinance or otherwise, the rates, fees, and terms for the collocation of small cell wireless facilities on the authority poles. The rates, fees, and terms shall comply with all of the following:
    - 1. The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with the Act.
    - 2. The Authority shall provide a good-faith estimate for any make-ready work within 60 days after receipt of a complete application. Make-ready work shall be completed within 60 days of written acceptance of the good-faith estimate by the Applicant.
    - 3. The person owning or controlling the authority pole shall not require more make-ready work than required to comply with law or industry standards.
    - 4. Fees for make-ready work shall not do any of the following:
      - i. Include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the Applicant.
      - ii. Include any unreasonable consultant fees or expenses.
      - iii. Exceed actual costs imposed on a nondiscriminatory basis.
  - (e) This section does not require the Authority to install or maintain any specific authority pole or to continue to install or maintain authority poles in any location if the Authority makes a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction. For authority poles with collocated small cell wireless facilities in place when an authority makes a decision to eliminate aboveground poles of a particular type, the Authority shall do 1 of the following:
    - 1. Continue to maintain the authority pole.
    - 2. Install and maintain a reasonable alternative pole or wireless support structure for the collocation of the small cell wireless facility.
    - 3. Offer to sell the pole to the wireless provider at a reasonable cost.
    - 4. Allow the wireless provider to install its own utility pole so it can maintain service from that location.
    - 5. Proceed as provided by an agreement between the Authority and the wireless provider.
- (8) No Provider Requirement of Service. This ordinance does not require wireless facility deployment or regulate wireless services.
- (9) Appeals: The Applicant may appeal any Authority determinations related to this ordinance to the highest elected body of the Authority or, the Charlevoix County Circuit Court.
- (10) Defense, Indemnity and Insurance: All applicant wireless providers shall:
- (a) Defend, indemnify, and hold harmless the Authority and its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the Applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of these.
  - (b) Obtain insurance naming the Authority and its officers, agents, and employees as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees. A wireless provider may meet all or a portion of the authority's insurance coverage and limit requirements by self-insurance. To the extent a wireless provider elects to self-insure, the wireless provider shall provide to the Authority evidence demonstrating, to the Authority's satisfaction, the wireless provider's financial ability to meet the authority's insurance coverage and limit requirements.
- (11) Bonding:
- (a) As a condition of a permit described in this act, the wireless provider shall provide a \$1,000 bond per small cell wireless facility, for the purpose of providing for the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determines should be removed to protect public health, safety, or welfare, to repair the ROW as provided under section § 153.125(F)(4)(b) and, to recoup rates or fees that have not been paid by a wireless provider in more than 12 months, if the wireless provider has received 60-day advance notice from the authority of the noncompliance.
  - (b) The Authority shall not require a cash bond, unless the wireless provider has failed to obtain or maintain a bond required under this section or the surety has defaulted or failed to perform on a bond given to the Authority on behalf of a wireless provider.

- (12) Labelling: A small cell wireless facility for which a permit is issued shall be labeled with the name of the wireless provider, emergency contact telephone number, and information that identifies the small cell wireless facility and its location.
- (13) Electric Costs: A wireless provider is responsible for arranging and paying for the electricity used to operate a small cell wireless facility.
- (14) Investor Owned Utilities.
- (a) This Ordinance does not add to, replace, or supersede any law regarding poles or conduits, similar structures, or equipment of any type owned or controlled by an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, or an independent transmission company.
  - (b) This ordinance does not impose or otherwise affect any rights, controls, or contractual obligations of an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, or an independent transmission company with respect to its poles or conduits, similar structures, or equipment of any type.
  - (c) Except for purposes of a wireless provider obtaining a permit to occupy a right-of-way, this ordinance does not affect an investor-owned utility whose rates are regulated by the MPSC. Notwithstanding any other provision of this ordinance, pursuant to and consistent with section 6g of 1980 PA 470, MCL 460.6g, the MPSC has sole jurisdiction over attachment of wireless facilities on the poles, conduits, and similar structures or equipment of any type or kind owned or controlled by an investor-owned utility whose rates are regulated by the MPSC.

**SECTION 2. Severability.** No other portion, paragraph or phase of the Code of the City of Charlevoix, Michigan shall be affected by this ordinance except as to the above sections, and in the event any portion, section or subsection of this ordinance shall be held invalid for any reason, such invalidation shall not be construed to affect the validity of any other part or portion of this ordinance or of the Code of the City of Charlevoix, Michigan.

**SECTION 3. Effective Date.**

This Ordinance shall become effective thirty (30) days after its enactment pursuant to the City Charter

Ordinance No. 820 was adopted on the 1st day of June, 2020 A.D., by the Charlevoix City Council as follows:

Motion by: Kalbfell  
 Seconded by: Cole  
 Yeas: Bryan, Oleksy, Cole, Kalbfell, Hagen, Slater  
 Nays: None  
 Absent: None

State of Michigan }  
 City of Charlevoix } §

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 Joyce M. Golding

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 Clerk

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 Luther Kurtz

\_\_\_\_\_  
 Mayor

CERTIFICATION

I, the undersigned, City Clerk of the City of Charlevoix, Charlevoix County, Michigan, do hereby certify that the foregoing is a true and complete copy of Ordinance No. 820 of 2020 adopted by the City Council of the City of Charlevoix, County of Charlevoix, State of Michigan, at a regular meeting held on June 1, 2020 and published in the *Charlevoix Courier* on June 5, 2020, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267 of the Michigan Public Acts of 1876.

Dated: June 2, 2020

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 Joyce M. Golding, City Clerk