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November 4, 2019

Ms. Alison Simmons
Planning & Zoning Director
P.O. Box 6122
Moncks Corner, SC

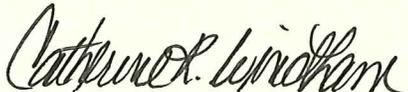
Re: Ordinance No. 19-10-52, to amend §11.7, Office and Industrial Uses of the Zoning and Development Standards Ordinance to establish the standards for the placement of small wireless facilities.

Dear Ms. Simmons:

You will find enclosed a certified copy of the above referenced Ordinance adopted by Berkeley County Council at a Regular Meeting of Council on October 28, 2019.

If any additional information is required, please do not hesitate to give our office a call.

With kind regards,


Catherine R. Windham
Clerk to Council

Enclosure: as stated

John O. Williams, II, County Attorney
Wilson Baggett, Assessor
Gregory Rines, GIS
Leah Guerry Dupree – For Filing

ORDINANCE NO. 19-10-52

AN ORDINANCE TO AMEND §11.7, OFFICE AND INDUSTRIAL USES, OF THE BERKELEY COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE TO ESTABLISH THE STANDARDS FOR THE PLACEMENT OF SMALL WIRELESS FACILITIES IN DESIGNATED COVERED AREAS IN UNINCORPORATED BERKELEY COUNTY, §4.3.1, USE TABLE, AND OTHER MATTERS AS IT RELATES THERETO.

WHEREAS, Berkeley County (“County”) encourages wireless infrastructure investment and wishes to provide a fair and predictable process for the deployment of Small Wireless Facilities while managing Public Rights-of-Way in a manner that promotes the interests of the public health, safety and welfare; and

WHEREAS, the County recognizes that Small Wireless Facilities including facilities commonly referred to as small cell and distributed antenna systems are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to residences, businesses, and schools within the County; and

WHEREAS, the County recognizes that Small Wireless Facilities together with high capacity transport medium such as fiber optic cabling may be effectively deployed in Public Rights-of-Way; and

WHEREAS, this Ordinance is intended to grant county consent to use of Rights-of-Way and establish a standard application process to streamline the issuance of necessary permits in a manner that is not a barrier to competition, and does not unnecessarily delay the implementation and installation of Small Wireless Facilities; and

WHEREAS, Article 11.7 of the Berkeley County Zoning Ordinance establishes conditional use parameters for Office and Industrial Uses that are permitted within specific zoning districts, which are also referenced in Section 4.3.1, Use Table.

NOW, THEREFORE, BE IT ORDAINED BY BERKELEY COUNTY COUNCIL, Article 11.7 of the Berkeley County Zoning and Development Standards Ordinance is hereby amended to add §11.7.1(C)(5), referencing the *Small Wireless Facilities* Ordinance as well as a new §11.7.2 entitled, “*Small Wireless Facilities*,” and Section 4.3.1, *Use Table*, is hereby amended to include *Small Wireless Facilities* as a conditional use supportable under every zoning district and listed under the land use category formerly-named “Communication Towers”, now hereby renamed, “Communication Technologies”, as enclosed.

Section 4.3.1, Use Table. The land use category of *Communication Towers* is hereby renamed *Communication Technologies* and amended to include Small Wireless Facilities as a conditional use in every Zoning District.

Land Use	R1	R1-MM	R2	R3	R4	R5	R1-R	R2-R	R2-R(F)	R15	Flex1	RNC	GC	OI	LI	HI	Use Definition
COMMUNICATION TECHNOLOGIES																	
<i>Small Wireless Facilities</i> Conditional Use: § 11.7	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	c	A Wireless Facility that is affixed to a pole, post, or other wireless support structure(s) and meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) 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 imaginary enclosure of not more than six (6) cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume, not including associated ancillary equipment as defined in Section 11.7.2(A)(21).

§11.7.1(C), *Applicability*, is hereby amended to read as follows:

Section 11.7.1(C)(5)

Applicability.

1. *New towers and antennas.* All new towers or antennas in Berkeley County shall be subject to these regulations, except as provided in subsection C(2) through C(5).
2. *Amateur radio station operators/receive only antennas.* This section shall not govern the installation of any antenna owned and operated by an amateur radio operator and used exclusively for private noncommercial purposes.
3. *Preexisting towers or antennas.* Preexisting towers and preexisting antennas shall not be required to meet the requirements of this section.

4. Proposed communications equipment co-locating [collocating] on existing towers and structures without addition to their height shall not be subject to the requirements of this section.
5. Proposed *Small Wireless Facilities* that conform to the requirements established in §11.7.2.

Section 11.7.2, establishing parameters for Small Wireless Facilities, is added to Article 11.7 to read as follows:

11.7.2 Small Wireless Facilities

A. Definitions.

1. ***“Antenna”*** means communication equipment that transmits or receives electromagnetic radio frequency signals used in the provision of Wireless Services.
2. ***“Applicable Codes”*** means uniform building, energy, electrical, plumbing, mechanical, gas, and fire codes in Title 6, Chapter 9 of the South Carolina Code of Laws, local amendments to those codes authorized by state law, and local codes or ordinances which impose requirements defined herein, including objective design and concealment standards to regulate location, context, material, color, stealth and concealment standards on a uniform and nondiscriminatory basis.
3. ***“Applicant”*** means any person who submits an Application to the County and is a Wireless Services Provider or a Wireless Infrastructure Provider.
4. ***“Application”*** means a request submitted by an Applicant for a permit to (i) Collocate Small Wireless Facilities; or, (ii) construct, install, maintain, operate, replace or modify a Utility Pole or Wireless Support Structure.
5. ***“Cable, Communications, Fiber, Utility, or Electric Easement”*** means an easement, granted to a cable or video service provider, a communications service provider (including without limitation a telephone utility), a fiber optics cable services provider, a public water, sewer, and/or stormwater utility provider, or an electric services provider created or authorized by state law to provide such services, that runs parallel to and abuts or within a Rights-of-Way and is occupied by existing Utility Poles or Wireless Support Structures carrying electric distribution lines, wires, cable, conduit, fiber optic cable for telecommunications, cable or electric service or supporting county street lights, or security lights. The term Cable, Communications, Fiber or Electric Easement excludes easements for service drops or lines connecting the customer’s premises to the cable, communications, fiber or electrical provider.
6. ***“County-Owned Pole”*** means (i) a Utility Pole owned, operated, and/or maintained by the County in Covered Areas, including a Utility Pole that provides lighting or traffic control functions, or other law enforcement functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the County in a Covered Area that supports only Wireless Facilities. The term does not include a Utility Pole owned or operated by and accounted for as an asset of a county electric utility.

7. **“Collocate”** means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to an existing Wireless Support Structure or Utility Pole located in Covered Areas within the jurisdiction of the County. **“Collocation”** has a corresponding meaning.
8. **“Covered Areas”** means the surface of, and the space above and below, any public “Rights-of-Way,” “ROW,” “County Rights-of-Way,” “Public Rights-of-Way,” “Cable, Communications, Fiber, Utility, or Electric Easement,” provided that the location/collocation of Small Wireless Facilities is not otherwise prohibited in said easements, and applicable “Private Property” in which the standards of this ordinance are met and as those terms are defined herein.
9. **“Day”** means calendar day unless the last day for the County or an Applicant to take action under this Ordinance ends on a weekend, holiday, or time when all but County emergency services are closed due to weather or some unforeseen situation.
10. **“Decorative Pole”** means a Utility Pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or a temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory county practices.
11. **“Department”** means the Berkeley County Planning and Zoning Department.
12. **“Design District”** means an area that is zoned, or otherwise designated by county ordinance, and for which the County maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
13. **“Fee”** means a one-time charge.
14. **“Historic District”** means an area that is zoned or otherwise designated as a Historic District under county, state or federal law and for which the County maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
15. **“Micro Wireless Facility”** means a Small Wireless Facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.
16. **“Person”** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the County.
17. **“Private Property”** refers to property located in unincorporated Berkeley County that is privately-owned and maintained.
18. **“Rate”** means a recurring charge.

19. ***“Rights-of-Way” or “ROW” or “County Rights-of-Way” or “Public Rights-of-Way”*** means that area on, below, or above a public roadway, highway, street, sidewalk, alley dedicated to, managed, or controlled by the County, County or the State of South Carolina, but not including a federal interstate highway, in the County.

20. ***“Roadway Maintenance Authority”*** means the South Carolina Department of Transportation (SCDOT) or the Berkeley County Roads and Bridges Division, whichever possesses public right-of-way maintenance authorities.

21. ***“Small Wireless Facility”*** means a Wireless Facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) 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 imaginary enclosure of not more than six (6) cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

22. ***“Transmission Pole”*** means a pole or similar structure that is used in whole or in part to carry electric transmission (as opposed to distribution) lines.

23. ***“Underground District”*** means an area that is designated herein or by Ordinance, that prohibit installing above ground structures in a Covered Area and for which the County maintains and enforces standards on a uniform and nondiscriminatory basis.

24. ***“Utility Pole”*** means a pole or similar structure that is used in whole or in part for the purpose of carrying electric lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control devices, traffic control or directional signage, or a similar function regardless of ownership, including County-Owned Poles. Such term shall not include structures supporting only Wireless Facilities, nor shall it include Wireless Support Structures.

25. ***“Waiver”*** means administrative relief granted at the discretion of the Zoning Administrator or designee when a request is made by an applicant in writing. The Zoning Administrator or designee shall not issue a waiver that would nullify the intent or purpose of this Chapter.

26. ***“Wireless Facility”*** means equipment at a fixed location that enables Wireless Services between user equipment and a communications network, including: (i) equipment associated with wireless communications; (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is Collocated, wireline backhaul facilities, coaxial or fiber optic cable that is between Wireless Support Structures or Utility Poles or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an Antenna.

27. ***“Wireless Infrastructure Provider”*** means any Person including a Person authorized to provide telecommunications service in the State, that builds, installs or maintains Utility Poles, wireless communication transmission equipment, Wireless Facilities or Wireless Support Structures.

28. ***“Wireless Services”*** means any services provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, delivered to the public using Wireless Facilities.

29. ***“Wireless Services Provider”*** means a Person who provides Wireless Services.

30. ***“Wireless Support Structure”*** means a freestanding structure, such as a monopole or, other existing or proposed structure designed to support or capable of supporting Wireless Facilities. Such term shall not include a Utility Pole.

B. Purpose and Scope.

1. The purpose of this Ordinance is to provide policies and procedures for the placement of Small Wireless Facilities in Covered Areas within the jurisdiction of the County.

2. It is the intent of this Ordinance to establish uniform standards including, but not limited to:

a) Prevention of interference with the use of streets, sidewalks, alleys, parkways, traffic light poles or other light poles, and other public ways and places; and

b) Prevention of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; and

c) Prevention of interference with other facilities and operations of facilities lawfully located in Covered Areas or public property; and

d) Preservation of the character of neighborhoods where facilities are installed; and

e) Preservation of the character of historic structures, or historic neighborhoods, including but not limited to such structures or neighborhoods listed on the National Register of Historic Places or locally designated Historic Districts; and,

f) Facilitation of the rapid deployment of Small Wireless Facilities to provide the citizens with the benefits of advanced Wireless Services.

C. Permitted Use; Application Process and Fees.

1. **Permitted Use and Consent.** Collocation of a Small Wireless Facility on an existing Utility Pole or Wireless Support Structure, or a new or modified Utility Pole or Wireless Support Structure installed in a Covered Area shall be a permitted use, subject to administrative review, conditions, and other requirements found herein. In accord with Article VIII, Section 15 of the State Constitution and related county code and ordinance provisions, the County consents to the use of Public Rights-of-Way by permit holders acting in compliance with this Ordinance.
2. **Permit Required.** No person shall place a Small Wireless Facility in a Covered Area without first filing a Small Wireless Facility Application and obtaining a permit, except as otherwise provided in this Ordinance.
3. **Permit Applications.** All Small Wireless Facility Applications filed pursuant to this Ordinance shall be on a form, paper or electronic, as required by the County. The Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly, and the County shall endeavor to protect materials so designated from public disclosure to the fullest extent permitted by state law.
4. **Application Requirements.** The Small Wireless Facility Permit Application shall be made by the Applicant, or its duly authorized representative as noted in a notarized statement from a Person with the Applicant with authority to make such an authorization, and shall contain the following:
 - a) The Applicant’s name, address, telephone number and e-mail address; and
 - b) Facility owner’s name, address, telephone number and email address, if different from Applicant; and
 - c) Intended facility use: owner-operated or owner-leased capacity; and
 - d) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application; and
 - e) A general description of the proposed scope of work for the Collocation of the Small Wireless Facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters, including but not limited to sub-surface utilities, likely to be affected or impacted by the work proposed; and
 - f) Identification of any consultant that is acting on behalf of the Applicant and that is authorized to speak with the County, or a designee of the County, on the area of consultation for the Applicant even if the Applicant cannot be available; and
 - g) Verification from an appropriate representative of the Applicant that the Small Wireless Facility shall comply with all Applicable Codes; and

h) Verification of payment of the annual county consent or administrative fee for telecommunications companies to use Public Rights-of-Ways pursuant to Section 58-9-2230; and

i) Verification of local business license, if applicable; and

j) Evidence the Applicant is duly authorized to do business in South Carolina; and

k) Evidence the Applicant has received any necessary certificate of public convenience and necessity or other required authority from the South Carolina Public Service Commission or the Federal Communications Commission or evidence that it is not required; and

l) A copy of an approved Encroachment Permit and all documents required as part of the encroachment permit application, by the applicable roadway maintenance authority, if the proposed location is within a public Right-of-Way; and

m) If the Small Wireless Facility is proposed to collocate on a utility pole or locate within an easement or right-of-way that is owned, managed, and/or operated by an entity other than those identified in §11.7.2C(4)(l), a statement that the Applicant has a lease, attachment agreement, or other authorization from the applicable entity who possesses ownership and/or maintenance responsibilities of the easement and/or Utility Pole affected by the proposed collocation/location; and

n) If the Small Wireless Facility is proposed to locate on private property, the Applicant shall provide to the Department a lease or other written authorization from the affected Property Owner(s); and

o) Any Building Construction and/or Trades Permits required by the Berkeley County Building and Codes Department have been applied for and issued concurrent with approval of the Small Wireless Facility Permit Application.

5. **Routine Maintenance and Replacement.** An Application shall not be required for the following maintenance and replacement activities, provided that the Applicant obtains any required authorizations to conduct work within the Covered Area by the entities possessing ownership and/or maintenance authorities over underlying easements and/or rights-of-way prior to doing so:

a) Routine maintenance:

b) The replacement of a Small Wireless Facility with another Small Wireless Facility that is substantially similar or smaller in size, weight, and height; or

c) The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities that are strung on cables between existing Utility Poles and/or Wireless Support Structures in compliance with the National Electrical Safety Code by a Wireless Services Provider or a Wireless Infrastructure Provider that is authorized to occupy the Public Rights-of-Way and that is remitting a consent, franchise, or administrative Fee pursuant to S.C. Code Ann. § 58-9-2230.

6. **Information Updates.** Any amendment to information contained in a permit Application shall be submitted in writing to the County within ten (10) business days after the change necessitating the amendment.

7. **Consolidated Application.** An Applicant seeking to Collocate multiple Small Wireless Facilities may, at the Applicant's discretion, file a consolidated Application and receive a single permit for up to twenty (20) Small Wireless Facilities. Provided, however, the County's denial of any site or sites within a single Application shall not affect other sites submitted in the same Application. The County shall grant a permit for any and all sites in a single Application that it does not deny subject to the requirements established herein.

8. **Application Fees.** Unless otherwise provided by law, and except as to telecommunication companies exempted pursuant to S.C. Code § 58-9-2230, all Applications for permits pursuant to this Ordinance shall be accompanied by a Fee of \$75.00 for each Small Wireless Facility, except that the Fee for Small Wireless Facilities addressed in a consolidated Application shall be \$75.00 each for the first five Small Wireless Facilities and \$50.00 for each additional Small Wireless Facility up to a maximum of twenty (20) Small Wireless Facilities. For clarity, any Applicant that pays either a franchise, consent Fee, or administrative Fee pursuant to the requirements of S.C. Code §58-9-2230 shall not be required to pay any building permit Fee, zoning permit Fee, encroachment Fee, degradation Fee, or any other Fee assessed on a telecommunications provider for its occupation of or work within the ROW.

9. **Interference with Public Safety Equipment.** A Small Wireless Facility shall be operated and maintained in a manner that does not interfere with public safety (police, traffic control, fire and emergency services) equipment.

D. Action on Permit Application.

1. **Review of Small Wireless Facility Applications.** The County shall review the Application for a Small Wireless Facility Permit for conformity with applicable requirements of this Ordinance, and shall issue a permit on nondiscriminatory terms and conditions subject to the following requirements:

a) Within ten (10) days of receiving an Application, the County must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the County must specifically identify the missing information.

b) Make its final decision to approve or deny the Application within forty-five (45) days of submission of a completed Application.

c) Notify the Applicant in writing of its final decision, and if the Application is denied, specify the basis for a denial, including citations to federal, state or local code provisions and/or statutes on which the denial was based.

d) Notwithstanding an initial denial, the Applicant may cure the deficiencies identified by the County and resubmit the Application within thirty (30) days of the denial, and the County shall approve or deny the revised Application within thirty (30) days of receipt of it. The subsequent review by the County shall be limited to the deficiencies cited in the original denial.

2. **Review Deadline.** If the County fails to act on an Application within the forty-five (45) day review period (or within the thirty (30) day review period for an amended Application), the Applicant may provide written notice that the time period for acting has lapsed. If the County fails to respond to this written notice or complete review of the Application within fifteen (15) days of this written notice, then the Application is deemed approved.

3. **Review of Eligible Facilities Requests.** Notwithstanding any other provisions of this Ordinance, the County shall approve and may not deny Applications that constitute eligible facilities requests for modification of an eligible support structure that does not substantially change the physical dimensions of such structure as provided in 47 CFR 1.40001, within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

4. **Compensation.** Subject to the limitations set forth in §11.7.2(C)(8) herein, every permit shall include as a condition the Applicant's agreement to pay such lawful franchise Fees, business license taxes, administrative Fees and consent Fees as are permitted under applicable South Carolina and federal law. The Applicant shall also pay all applicable ad valorem taxes, service Fees, sales taxes, or other taxes and Fees as may now or hereafter be lawfully imposed on other businesses within the County.

E. Requirements for Small Wireless Facilities in Covered Areas.

1. **Administrative Review.** The County shall perform an administrative review of permit Applications including the location or installation of new, modified, or replacement Utility Poles and/or Wireless Support Structures and the attachment of Wireless Facilities and equipment on Utility Poles or Wireless Support Structures as stated herein. Review factors, in addition to location, shall include the size, shape, color, texture, and materials of the structures and attachments.

a) The Zoning Administrator or designee may require a proposed Wireless Facility be designed to not be significantly more readily-apparent or plainly visible (to a reasonable person of ordinary sensibilities) from Covered Areas than existing utility structures, poles and equipment located within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure.

b) Where Small Wireless Facilities are determined to be appropriate, the use of reasonable stealth and concealment treatments, low profile equipment and control boxes, and screening may be required to avoid significant negative impacts on the character and visual aesthetics of the area. However, such requirements may be waived by the Zoning Administrator or designee upon a showing that the particular location of a Small Wireless Facility does not warrant stealth or concealment treatments or imposes an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.

c) Supplemental review districts identified in §11.7.2(E)(3) and listed in Appendix A may be subject to a higher level of review.

2. **Maximum Size of Permitted Use.**

a) The height of an Antenna of a Collocated Small Wireless Facility shall be limited to the greater of ten (10) feet above either of the two:

i. The height of an existing or modified Utility Pole or Wireless Support Structure; or

ii. The height of a new or modified Utility Pole, or Wireless Support Structure, provided it is limited in height in accordance with the criteria below:

(a) The tallest Utility Pole, excluding Transmission Poles, or Wireless Support Structure located in the same Covered Area, measured from grade, in place within five hundred (500) linear feet on the same Covered Area as the subject Utility Pole or Wireless Support Structure as of the effective date of this Ordinance; or

(b) In the absence of any such Utility Pole or Wireless Support Structure, either (i) forty (40) feet in any area zoned or used exclusively for residential use, unless a waiver is granted for good cause shown, or (ii) fifty (50) feet in any other area.

b) Collocation is not allowed on a Decorative Pole less than twenty (20) feet in height.

3. **Supplemental Review Districts.** Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures located in supplemental review districts shall be a conditional use and subject to the design and aesthetic requirements and review processes for structures specified in this Ordinance establishing the supplemental review district(s) in addition to the requirement of this Ordinance, provided that the County will work in good faith with the Applicant to accommodate the installation of Collocated Small Wireless Facilities and new or modified Utility Poles or Wireless Support Structures in supplemental review districts to the fullest extent practicable. The County reserves its right to maintain and implement the following types of supplemental review districts.

a) **Underground Districts.** A Wireless Services Provider or a Wireless Infrastructure Provider shall comply with nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing above-ground structures in the Covered Area in these districts. Nothing in this section shall prohibit the use or replacement of existing Utility Poles or Wireless Support Structures in Underground Districts for the Collocation of Small Wireless Facilities subject to administrative review by the zoning administrator, appropriate design and concealment and a finding that such use does not increase the height by more than three (3) feet.

i. Location of Underground Districts: Underground Districts include those areas within the Covered Area in which electric utilities are located underground or are planned to be located underground.

b) **Historic and Design Districts.** As a condition for approval of new Small Wireless Facilities or new Wireless Support Structure in a Historic District or a Design District, the Zoning Administrator or designee may require that a Wireless Services Provider or a Wireless Infrastructure Provider comply with the design and aesthetic standards of the Historic District or Design District to minimize the impact to the aesthetics in a Historic District or on a Design District's Decorative Poles. If design and concealment treatments are determined on review by the Zoning Administrator or designee to be insufficient to mitigate harm to the Historic District or Design District, the Application may be denied. This section may not be construed to limit Berkeley County's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

4. **Appeals, Special Exceptions and Variance Requirements.** Appeals of administrative decisions and requests for special exception(s) and variance(s) from the provisions of this Ordinance, when strict application would result in an unnecessary hardship or in the inability to deploy needed Small Wireless Facilities, shall be heard and decided by the Board of Zoning Appeals (BZA) in accordance with the requirements and procedures set forth in Article 21 and Section 11.2 as applicable. An applicant seeking a Special Exception to construct a new Decorative Pole, Utility Pole or other Wireless Support Structure to Collocate a Small Wireless Facility in an Underground District shall demonstrate, including certification through an engineer, that it has diligently attempted to locate the proposed Decorative Pole, Utility Pole, Wireless Support Structure, or Small Wireless Facility outside of the Underground District and that placement of the Decorative Pole, Utility Pole, Wireless Support Structure, or Small Wireless Facility within the Underground District is necessary to provide the needed wireless coverage or capacity, and one or more of the following conditions exist supporting a Special Exception:

a) No existing Utility Pole or Wireless Support Structure is located within the location search radius or to the extent a Utility Pole or Wireless Support Structure is located within the search radius, such Utility Pole or Wireless Support Structure:

i. Is not available for Collocation under commercially reasonable rates, terms, and conditions;

ii. Cannot accommodate the Collocation of the Small Wireless Facility and meet the technical requirements necessary to deliver adequate wireless service coverage or capacity; or

iii. Would require modifications exceeding the three (3) feet height limitation imposed in §11.7.2(E)(3).

b) The only available option to deliver adequate wireless service coverage or capacity in the search radius requires modifications to an existing Utility Pole or Wireless Support Structure exceeding the three (3) feet height limitation imposed in §11.7.2(E)(3) or the installation of a new Utility Pole or Wireless Support Structure for Collocation of a Small Wireless Facility, or

c) The applicant has demonstrated other circumstances that, in the reasonable discretion of the Board of Zoning Appeals (BZA), warrant a special exception or variance.

d) The Applicant shall abide by the design, stealth and concealment treatments imposed as conditions of the Special Exception.

5. **Existing Supplemental Review Districts.** Nothing in this Ordinance shall prohibit or otherwise limit the County from establishing additional supplemental review districts, provided however, that facilities and structures for which a permit was approved or deemed approved pursuant to this Ordinance prior to the establishment of the additional supplemental review district remain subject to the provisions of this Ordinance, including routine maintenance and replacement of those facilities and structures as set out in §11.7.2(E)(3) of this Ordinance, and not to any provisions otherwise applicable to the additional supplemental review district. If a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily replaces such facilities in a manner that does not comply with §11.7.2(E)(3) of this Ordinance, or if a Wireless Services Provider or a Wireless Infrastructure Provider voluntarily relocates such facilities, such replacement or relocation is subject to the then-existing provisions and requirements of the additional supplemental review district.

6. **Repair of Damage.** A Wireless Services Provider or a Wireless Infrastructure Provider shall repair all damage to a County Right-of-Way directly caused by the activities of the Wireless Services Provider or the Wireless Infrastructure Provider, while occupying, installing, repairing, or maintaining Wireless Facilities, Wireless Support Structures, County Utility Poles, or Utility Poles and to return the Right-of-Way to its functional equivalence before the damage. If the Wireless Services Provider or the Wireless Infrastructure Provider fails to make the repairs required by the County within forty-five (45) days after written notice, unless the County and the Wireless Services Provider or the Wireless Infrastructure Provider agree in writing to a longer time period, the County may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The County may maintain an action to recover the costs of the repairs.

F. Effect of Permit.

1. **Authority Granted: No Property Right or Other Interest Created.** A permit from the County authorizes an Applicant to undertake only certain activities in accordance with the Ordinance and does not create a property right or grant any authority whatsoever to the Applicant to impinge upon the rights of others who may already have an interest in the Covered Area.
2. **Duration.** Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Ordinance shall be valid for a period longer than twelve (12) months unless both County and Applicant agree to a reasonable extension and all required Fees are paid for the term regardless of construction. The inability of the Applicant to obtain electrical power or backhaul transport services to serve the Wireless Facility such that it is operational within the twelve (12) months due to the action or inaction of third-party utility providers shall not result in the invalidity of the permit.

G. Removal, Relocation or Modification of a Small Wireless Facility in the ROW.

1. **Notice.** Within ninety (90) days following written notice from the County, a Wireless Services Provider or a Wireless Infrastructure Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any Wireless Facilities or Wireless Support Structures within the Rights-of-Way whenever the County, in its reasonable discretion, has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any County improvement in or upon, or the operations of the County in or upon, the Rights-of-Way.
2. **Emergency Removal or Relocation of Facilities.** The County retains the right to cut or move any Wireless Facility or Wireless Support Structure located within its Rights-of-Way as the County, in its reasonable discretion, may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the County shall notify the Wireless Services Provider or the Wireless Infrastructure Provider and provide opportunity to move its own Wireless Facilities or Wireless Support Structure prior to the County cutting or removing a Wireless Facility or Wireless Support Structure and the County shall notify the Wireless Services Provider or the Wireless Infrastructure Provider after cutting or removing a Wireless Facility.
3. **Abandonment of Facilities.** Upon abandonment of a Wireless Facility or Wireless Support Structure within the County Rights-of-Way, the Wireless Services Provider or the Wireless Infrastructure Provider shall notify the County within ninety (90) days of such abandonment. Following receipt of such notice the County may direct the Wireless Services Provider or the Wireless Infrastructure Provider to remove all or any portion of the Wireless Facility or Wireless Support Structure if the County, in its sole discretion, determines that such removal will be in the best interests of the public health, safety, and welfare.

4. **Abandonment by Inaction.** At any point when a Wireless Services Provider or a Wireless Infrastructure Provider fails to pay any required Fee, or annual payment to the County, and fails to respond within sixty (60) days to a written inquiry from the County as to whether the Wireless Services Provider or the Wireless Infrastructure Provider intends to continue to operate a Wireless Facility or Wireless Support Structure, for whatever reason, the Wireless Facility shall be deemed abandoned and the County may, at its sole option, remove all or any portion of the Wireless Facility or Wireless Support Structure, or take other action as authorized by law, including recovery of actual costs incurred in removing the Wireless Facility or Wireless Support Structure.

H. Attachment to County-Owned Utility Poles in the Covered Areas.

1. **Annual Rate.** The rate to place a Small Wireless Facility on a County-Owned Pole in Covered Areas shall be fifty (\$50.00) dollars per year per wooden pole or two hundred (\$200.00) dollars per year for all other County-Owned Poles. This rate is in addition to reimbursement to the County for any expenses for make-ready work. The County reserves the right to require a pole attachment agreement to further define the terms and conditions of attachments to County-Owned Poles. The rates specified in this section shall not apply to poles owned, or operated and accounted for as an asset of, a county electric utility.

2. **Cease Payment.** A Wireless Services Provider or a Wireless Infrastructure Provider is authorized to remove its facilities at any time from a County-Owned Pole in Covered Areas and cease paying the annual rate to the County as of the next due date for payment following the removal.

3. **Make-Ready.** For County-owned Utility Poles in Covered Areas, the Applicant shall reimburse the County for expenses for any reasonable make-ready work. The County shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Small Wireless Facility, including pole replacement if necessary, within sixty (60) days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within sixty (60) days of written acceptance of the good faith estimate by the Wireless Services Provider or the Wireless Infrastructure Provider.

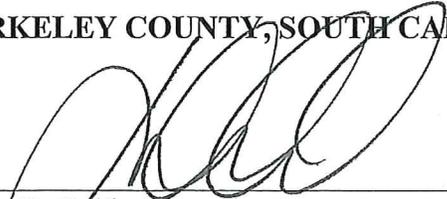
4. **County Utilities Excluded.** Nothing in this section shall be construed to affect the authority of a county electric utility to deny, limit, restrict, or determine the rates, Fees, terms, and conditions for the use of or attachment to a Utility Pole owned, or operated and accounted for as an asset of, a county electric utility.

I. Severability.

In the event any title, subtitle, section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or work of this Ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the Ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

ADOPTED this 28th day of October, 2019.

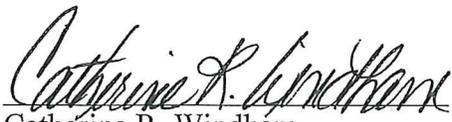
BERKELEY COUNTY, SOUTH CAROLINA



John P. Cribb, Supervisor
Berkeley County Council

[SEAL]

ATTEST:



Catherine R. Windham
Clerk to County Council

Approved as to form:



John O. Williams, II
County Attorney

First Reading: August 26, 2019
Second Reading: September 23, 2019
Public Hearing: October 28, 2019
Third Reading: October 28, 2019

19-10-52

MEMBERS OF COUNTY COUNCIL

excused
JOSHUA S. WHITLEY Voting _____

BCS
BRANDON COX Voting YES

Phillip Obie II
PHILLIP OBIE, II Voting YES

JHS
JACK H. SCHURLKNIGHT Voting YES

JTN
JOE T. NEWELL Voting YES

CPJ
CALDWELL PINCKNEY, JR. Voting YES

excused
STEVE C. DAVIS Voting _____