



CITY OF CHARLESTON WEST VIRGINIA



Council Member – ward 5

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Ordinance and Rules Committee, Chair
Parks and Recreation Committee

TO: Ordinance and Rules Committee
FROM: Jeanine Faegre, Chair
RE: Committee Meeting

A meeting of the Council Committee on Ordinance & Rules will be held on Tuesday, April 30, 2019. The meeting will begin promptly at 5:45 PM in the AV Room, 3rd Floor of City Hall.

Agenda

Previous Minutes

1. 4-10-2019

Bills

1. Bill No. 7816 - A BILL to amend the Code of the City of Charleston, by adding thereto new sections within Chapter 102, Article V and to amend and reenact sections of said code relating to implementing the West Virginia Small Wireless Facilities Deployment Act; detailing the purpose, application requirements, associated fees, zoning applicability, design requirements, and application process; authorizing the Planning Director and Building Commissioner to implement certain guidelines and rules; providing processing deadlines and right-of-way requirements; and updating related sections of code to conform.

Adjourn

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JF/ns

MINUTES

ORDINANCE AND RULES COMMITTEE MEETING

6:00 P. M., FEBRUARY 10, 2019

A/V CONFERENCE ROOM

Jeanine Faegre, Chairperson, called the meeting of the Charleston City Council Committee on Ordinance and Rules to order at 6:00p.m., FEBRUARY 10, 2019, in the Audio/Visual Room in City Hall.

Committee Members Present:

Jeanine Faegre, Chair
Bobby Haas, Vice Chair
Caitlin Cook
Chuck Overstreet
Tiffany Wesley-Plear

Others:

Kevin Baker
Tony Harmon
Matt Sutton

1. Bill No. 7812 – A BILL to amend Chapter 14, Article II, Section 14-33 of the Municipal Code of the City of Charleston for the purpose of updating the Building Code of the City of Charleston to be consistent with the recently amended State Building Code as set forth in W. Va. Code § 29-3-5, and State of West Virginia Title 87, Legislative Rule Series 4 (§ 87-4-1 et seq.).

Councilmember Faegre introduced Tony Harmon. He stated the changes to the Building Code were the energy code for commercial buildings and the wind speed design factor. Councilmember Faegre stated that the City is modifying its code to comply with the state's changes. Kevin Baker added that the City received notice of the changes around March 28, 2019.

Councilmember Cook inquired as to what impact the changes would have to the City. Tony Harmon answered that the energy code was changed because various grants will want the most recent codes in place. Councilmember Wesley-Plear confirmed that existing structures will not be required to make changes based on the update. Councilmember Cook asked if the City was required to inform citizens as to the changes. Tony Harmon answered that the changes will be posted on the website. Additionally, a copy will be sent out with any new contracting licenses issued.

With no further discussion, Councilmember Haas made a motion to approve the bill. Councilmember Overstreet seconded. With the ayes being in the majority, Bill No. 7812 was approved.

Councilmember Overstreet motioned to adjourn the meeting. Councilmember Cook seconded. Meeting adjourned.

Bill No. 7816 Committee Substitute:

Introduced in Council:

April 15, 2019

Introduced by:

Samuel Minardi

Adopted by Council:

Referred to:

**Ordinances & Rules
Committee**

Bill No. 7816 - A BILL to amend the Code of the City of Charleston, by adding thereto new sections within Chapter 102, Article V, designated Sections 102-200, 102-201, 102-202, 102-203, 102-204, 102-205, 102-206, 102-207, 102-208, 102-209, and 102-210; and to amend and reenact sections 102-212, 102-213, and 102-215 of said code, all relating to implementing the West Virginia Small Wireless Facilities Deployment Act; detailing the purpose, application requirements, associated fees, zoning applicability, design requirements, and application process; authorizing the Planning Director and Building Commissioner to implement certain guidelines and rules; providing processing deadlines and right-of-way requirements; and updating related sections of code to conform.

Now, therefore, be it ordained by the Council of the City of Charleston:

That the Code of the City of Charleston be amended by adding thereto new sections within Chapter 102, Article V, designated Sections 102-200, 102-201, 102-202, 102-203, 102-204, 102-205, 102-206, 102-207, 102-208, 102-209, and 102-210; and to amend and reenact sections 102-212, 102-213, and 102-215 of said code, all to read as follows:

CHAPTER 102. – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES.

ARTICLE V. – POLES, WIRES AND ANTENNAS.

Sec. 102-200. Purpose.

It is the purpose of this ordinance to implement the West Virginia Small Wireless Facilities Deployment Act, which is codified at W. Va. Code §31H-1-1, *et seq.* This Article establishes nondiscriminatory policies and procedures for use of the rights-of-way and more specifically the placement of small wireless facilities in rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole. The City seeks to establish uniform standards consistent with federal and state law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to: (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other

public ways and places; (2) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic; (3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property; (4) protect against environmental damage, including damage to trees; (5) preserve the character of Historic Districts or areas with Decorative Poles, Decorative Sidewalks, Decorative Streetscapes, or brick streets; and (6) facilitate rapid deployment of small cell facilities to provide the benefits of wireless services to the City's residents and visitors.

Sec. 102-201. Definitions.

(a) As used in this article, this section incorporates all of the definitions contained within W. Va. Code §31H-1-2.

(b) In addition, the following terms shall have the following definitions, as used in this article:

(1) "Day" means a calendar day, but when computing any period of time prescribed by any applicable provision of this article, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off;

(2) "Excavation" means any work in the surface or subsurface of the public rights-of-way, including, but not limited to the following: opening the public rights-of-way; installing, servicing, repairing, or modifying any facility; and restoring the surface and subsurface of the public rights-of-way. Excavation shall not include activities in public rights-of-way wherein the surface and subsurface are not disturbed and wherein such activities take place through existing manholes, conduits, and other such facilities; and

(3) "Facility" or "Facilities", for the purpose of the definition of "Excavation" only, shall include, but not be limited to, any and all lines, poles, cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pedestals, splice boxes, surface location markers, tracks, tunnels, utilities, vaults, and other appurtenances or tangible things owned, leased, operated, or licensed by a person or company that are located or are proposed to be located under, on, or above ground within the public rights-of-way.

Sec. 102-202. Application.

(a) A wireless provider seeking to conduct any excavation beyond the installation of a new pole within the public rights-of-way, shall follow the City of Charleston Public Rights-of-Way Excavation and Restoration Ordinance Manual, codified at Sec. 102-91 of this code with respect to its excavation activities.

(b) A wireless provider's use of the public rights-of-way that does not require excavation shall follow the provisions of this article to file a permit with the City Engineer, including that the permit application shall include the following:

(1) The applicant's name, address, phone number, and email address, as well as all duly authorized representatives acting on behalf of the applicant

82 (2) A general description of the proposed small wireless facility and associated
83 pole, if applicable.

84 (3) Construction and engineering drawings and information demonstrating
85 compliance with state law and this article, including a structural analysis of the pole
86 where the applicant proposes to install the small wireless facility;

87 (4) An attestation that the small wireless facilities will be operational for use by a
88 wireless provider within one year after the permit issuance date, unless the City and the
89 applicant agree to extend the period or delay is caused by lack of commercial power or
90 communications transport facilities to the site;

91 (5) An attestation that the small wireless facility will comply with Federal
92 Communications Commission regulations concerning (A) radiofrequency emissions
93 from radio transmitters; and (B) unacceptable interference with the public safety
94 spectrum and CII spectrum, including compliance with the abatement and resolution
95 procedures for interference with the public safety spectrum and CII spectrum
96 established by the Federal Communications Commission set forth in 47 C.F.R. 22.970
97 through 47 C.F.R. 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;

98 (6) Proof that the applicant maintains property insurance for its property's
99 replacement cost against all risks, workers' compensation insurance as required by law,
100 and commercial general liability insurance with respect to its activities on City
101 improvements or rights-of-way of not less than \$1,000,000 of coverage for damages
102 including bodily injury and property damage: *Provided*, That the commercial general
103 liability policy shall include the City as an additional insured and the certification shall be
104 filed with the application in order for it to be considered complete: *Provided, however*,
105 That a self-insured applicant shall provide sufficient evidence to demonstrate its
106 financial ability to self-insure the insurance coverage;

107 (7) An attestation that it will provide a bond, escrow deposit, letter of credit, or
108 other financial surety required by the City to ensure removal of abandoned or unused
109 wireless facilities or damage to the right-of-way or City property caused by the applicant
110 or its agents, as set by the City, prior to beginning any installation; and

111 (8) An attestation that it will notify the City of Charleston and call the West
112 Virginia 811 "call before you dig" hotline in order to locate all underground utilities at
113 least 72 hours before making any excavation.

114 (c) A wireless provider that seeks to use a City utility pole shall provide the
115 following additional information:

116 (1) The additional wind load that the wireless facility adds to the pole;

117 (2) A description of how the wireless provider will provide power to the wireless
118 facility;

119 (3) A description of how the wireless facility would attach to the pole, including
120 whether it would involve drilling holes in the pole or attaching bands to the pole;

121 (4) Whether there will be additional wire in the pole;

122 (5) An attestation that the applicant is responsible for any damage ~~to the wireless~~
123 ~~facility if there is a collision that causes damage to the pole that is caused by the~~
124 ~~negligence of the wireless provider or any of its officers, agents, employees, directors,~~
125 ~~or representatives related to installing, repairing, or maintaining facilities in rights-of-~~
126 ~~way;~~

127 (6) An attestation that the wireless facility will meet all clearance requirements if

it is over the roadway; and

(7) An attestation that the wireless facility will not interfere with any other equipment signals on the poles that are owned by the City.

Sec. 102-203. Fees.

(a) An application is incomplete unless it has the following fees submitted along with the application:

(1) \$200 for each small wireless facility on an existing utility pole for the first five poles in the same application, followed by \$100 for each small wireless facility thereafter in the same application;

(2) \$250 for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is a permitted use, as detailed in Sec. 102-204 of this code;

(3) \$1,000 for the proposed installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that is not a permitted use, as detailed in Sec. 102-204 of this code.

(b) The use of the public right-of-way for the collocation of small wireless facilities or the installation, maintenance, modification, operation, repair or replacement of a utility pole in the right-of-way or any stringing of additional wires, or changing the location of any pole or wire, requires a permit, as detailed in section 102-213 of this code. The fee for such permit is \$25 per pole, per year.

(c) An applicant shall pay an annual fee of \$65 per year for access to each City-owned utility pole and complete all the additional requirements stated in Sec. 102-202 of this code.

Sec. 102-204. Permitted Use; Zoning Applicability.

(a) A wireless provider that seeks to collocate small wireless facilities and associated efforts to install, maintain, modify, and replace the wireless provider's own utility poles or, with the permission of the owner, a third party's utility pole, in, along, across, upon, and under the right-of-way in any zone or outside of the right-of-way in property not zoned exclusively for single-family residential use is a permitted use, as long as the following conditions are met:

(1) The structures and facilities are installed and maintained so as not to obstruct or hinder the usual travel or public safety on the right-of-way or to obstruct the legal use of the right-of-way by the City or other utilities;

(2) Any new or modified utility pole does not exceed the greater of (A) ten feet above the tallest existing utility pole in place on March 5, 2019, within 500 feet of the new pole or (B) fifty feet above ground level;

(3) The small wireless facility complies with the reasonable, written design guidelines created by the Planning Director, as authorized by Sec. 102-205 of this code;

(4) Any replacement of decorative poles necessary to collocate a small wireless facility shall reasonably conform to the design aesthetics of the decorative poles being replaced;

(5) The area has not been designated solely for underground communications and electrical lines at least three months prior to submission of the permit application, provided that (A) those utility poles which the City allows to remain shall be made available for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, and (B) a wireless provider may install a new utility pole in the designated area when it is not able to provide wireless service by collocating on a remaining structure; and

(6) Any other applicable restriction in state law.

(b) Any other application is not a permitted use and is subject to the Zoning Ordinance for the City of Charleston.

Sec. 102-205. Design Guidelines.

(a) The Planning Director is authorized to create reasonable, written design guidelines with objective, technically feasible criteria that reasonably match the aesthetics and character of an immediate area regarding the following:

(1) The location of any ground-mounted small wireless facilities;

(2) The location of a small wireless facility on a utility pole or wireless support structure;

(3) The appearance and concealment of small wireless facilities, including those relating to materials used for arranging, screening, or landscaping; and

(4) The design and appearance of a utility pole or wireless support structure.

(b) The guidelines shall be applied in a nondiscriminatory manner and shall be posted publicly on the City of Charleston's Planning Department web page. The Planning Director may change the guidelines in a prospective manner for all permit applications moving forward, but may not change requirements on any person who has already applied for a permit. Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with the Planning Director's current design guidelines as of the time of the permit application.

(c) The guidelines shall be (1) reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) objective and published in advance.

Sec. 102-206. Application Processing.

(a) All permit applications filed pursuant to this article shall be reviewed for completeness by the City and if the application is incomplete, the City shall notify the applicant within ten days of receiving the application. The City shall specify the missing information in writing and all processing deadlines required by this section are tolled.

(b) An application for collocation of a small wireless facility shall be processed within 60 days of the receipt of the application.

(c) An application for the installation, modification, or replacement of a utility pole in the right-of-way shall be processed within 90 days of the receipt of the application.

(d) Within 60 days of receiving a complete application for use of a City utility

pole, the City shall provide a good faith description of any make-ready work necessary to enable the pole to support the requested collocation, including pole replacement, if necessary because the pole would otherwise be structurally unsound. If the applicant accepts the good faith description, the make-ready work shall be completed by the applicant within 60 days of acceptance.

(e) Processing deadlines may also be tolled by agreement of the applicant and the City.

(f) The City may deny the application if the application:

(1) Materially interferes with the safe operation of traffic control equipment;

(2) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(4) Fails to comply with the reasonable and nondiscriminatory spacing requirements of general application adopted by the Planning Director pursuant to rules authorized by Sec. 102-215 of this Code that concern the location of poles; in the same right-of-way as an existing small wireless facility, or an already permitted but unconstructed small wireless facility;

(5) Fails to comply with the reasonable and nondiscriminatory rules approved by the Building Commissioner, as authorized in Sec. 102-209 of this code;

(6) Fails to comply with the application design guidelines authorized in Sec. 102-205 of this code; or

(7) Fails to attest that a small wireless facility will comply with relevant Federal Communications Commission regulations, as required by Sec. 102-202.

(g) If the City denies the application, it shall document the basis for the denial, including the specific provision on which the denial was based, and send the documentation to the applicant on or before the day the City denies the application. The applicant then has 30 days to cure the deficiencies identified without paying an additional application fee. The City shall have 30 days to approve or deny the revised application.

(h) The installation or collocation shall be completed within one year after the permit issuance date unless the City and the applicant agree to extend the period or a delay is caused by the lack of commercial power or communications facilities at the site.

(i) Upon approval of the application and posting of the reasonable bond, escrow deposit, letter of credit, or other financial surety required by the City to ensure removal of abandoned or unused wireless facility or damage to the right-of-way or authority property, the applicant may undertake the installation or collocation and operate and maintain the small wireless facilities and associated poles.

Sec. 102-207. Consolidated applications permitted.

An applicant may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities. The denial of one or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch.

266 Sec. 102-208. Work within and repairs to the Right-of-Way.

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268 (a) The City may restrict the applicant from working within a right-of-way when a
269 road is closed or its access is limited, but it may not require an additional application for
270 routine maintenance within the right-of-way to permitted facilities;

271 (b) If the applicant needs to close a sidewalk or street in order to install or
272 perform work on the wireless facility, the applicant shall contact the Office of the
273 Director of Traffic and provided a detailed set of Maintenance of Traffic plans that
274 shows any necessary signage, the method of controlling traffic, and any detour routes.
275 The Maintenance of Traffic plans must be reviewed by the Director of Traffic and
276 approved by the Chief of Police and the Collector's Office if any fees are due. The
277 Director of Traffic will notify the applicant when all approvals have been received.

278 (c) If the City determines that it is necessary, appropriate, or useful in response
279 to an imminent danger to public health, safety, or property, or for the construction,
280 repair, maintenance, or installation of a City improvement, to move a small wireless
281 facility located within the public rights-of-way, then the City shall provide written notice
282 to the applicant and the applicant shall remove the small wireless facility within 90 days.

283 (d) Any damage to the public right-of-way directly caused by a wireless provider
284 or other utility's activities in the right-of-way shall be repaired in accordance with the
285 City of Charleston Public Rights-of-Way Excavation and Restoration Ordinance Manual,
286 codified at Sec. 102-91 of this code, in order to return the right-of-way to its functional
287 equivalence before the damage. After the wireless provider receives written notice, the
288 city may assess a fine of \$100 per day until the repairs are completed. If the entity fails
289 to make the repairs required by the City within a reasonable time after written notice,
290 the City may complete the repairs and charge the entity for the reasonable,
291 documented cost of the repairs in addition to the daily fine assessed.

292
293 Sec. 102-209. Building Commissioner Rules.

294
295 (a) The Building Commissioner is authorized to create reasonable rules for
296 construction and public safety in the rights-of-way, including wiring and cabling
297 requirements, grounding requirements, and abandonment and removal provisions, to
298 the extent any additional rules are necessary.

299 (b) The rules shall be applied in a nondiscriminatory manner and shall be posted
300 publicly on the City of Charleston's Building Department web page. If the Building
301 Commissioner determines that no additional rules are necessary, the web page must
302 state that and point persons to the relevant general rules. The Building Commissioner
303 may change the guidelines in a prospective manner for all permit applications moving
304 forward, but may not change requirements on any person who has already applied for a
305 permit. Each new or modified small wireless facility or utility pole installed in the right-of-
306 way shall comply with the Building Commissioner's current rules for construction and
307 public safety as of the time of the permit application.

308
309 Sec. 102-210. Revocation.

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311 The City may revoke a permit at any time if the conditions of the permit are no

312 longer being satisfied.

313

314 Sec. 102-212. - Franchise to set or place wires, poles, other paraphernalia, on streets;
315 use of wires.

316

317 (a) No person shall set or place any poles, wires, cables, guy lines, stays or other
318 paraphernalia for carrying or supporting wires or keeping them in place in any of the
319 streets and public places in the city unless such person has first procured a franchise
320 from the proper authorities of the city authorizing such occupation of the streets and
321 public places. When duly authorized by franchise granted as required by law, such
322 person may set and maintain poles, wires, cables, guy lines, stays and other like
323 paraphernalia for carrying or supporting wires if the wires are used only for carrying of
324 electricity for light or power; for telephone, telegraph or cable television service; for
325 messenger and signal service; for fire alarm or police alarm purposes or any other
326 public service, but subject to the provisions of this article, and such rules and
327 regulations for the protection of life and property as may be lawfully adopted by the city
328 council.

329 (b) Notwithstanding the provisions of subsection (a) of this section, a wireless
330 provider seeking a permit for small wireless facilities is not required to have a franchise
331 agreement with the City, pursuant to W. Va. Code §31H-2-4, but it may enter into such
332 a non-exclusive agreement if it desires.

333

334 Sec. 102-213. - Permit for additions, replacements, relocations of wires.

335

336 No person shall string any additional telegraph, telephone, messenger, signal or
337 electric lighting wires, or change the location of any pole or wire, or repair or replace
338 any pole or wire without a permit from the ~~city council~~ City Engineer, specifying
339 particularly the proposed location and change or repair. ~~No permit to string any~~
340 ~~additional wire or to change the location of or to repair or replace any pole or wire shall~~
341 ~~be issued to any telegraph, telephone, messenger, television, signal or electric lighting~~
342 ~~company, or to any person or company owning, operating or maintaining overhead~~
343 ~~wires or poles in the city until such company or person shall have filed in the office of~~
344 ~~the city manager a complete list of his poles and overhead wires, giving their locations~~
345 ~~and designating such poles and overhead wires by numbers and letters identifying the~~
346 ~~company to which such poles belong.~~

347

348 Sec. 102-215. - Right of council to prescribe kind, size and location of poles.

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350 Except as provided in this article more specifically with respect to small wireless
351 facilities, the city council shall have the right The City Engineer, in consultation with the
352 Director of Traffic, is hereby authorized to adopt nondiscriminatory rules to prescribe the
353 kind and size of all poles to be placed upon the streets, and the location of such poles,
354 or to forbid the location of any additional poles at points where traffic is likely to be
355 impeded, where the sidewalks are narrow, where they would be in the way of the fire
356 department, upon any street or part of a street from which poles have been ordered
357 removed by competent authority, or on any street or side of street where there is

358 already an excess of poles.: *Provided*, That any restriction on the location of poles may
359 not prevent a wireless provider seeking placement of a small wireless facility from
360 serving any location.