



Ohio Revised Code

Section 4939.0314 Powers of municipality regarding placement of small cell facilities or wireless support structures.

Effective: August 1, 2018

Legislation: House Bill 478 - 132nd General Assembly

With respect to the placement of any small cell facility or wireless support structure in a public way, a municipal corporation may do any of the following:

(A) Reserve space for future public safety or transportation uses in the public way or on a wireless support structure or pole owned by a municipal corporation in a documented and approved plan in place at the time an application is filed. A reservation of space shall not preclude placement of a pole or collocation of a small cell facility. If replacement of the municipal corporation's pole or wireless support structure is necessary to accommodate the collocation of the small cell facility and the future use, the operator shall pay for the replacement of the pole or wireless support structure, and the replaced pole or wireless support structure must accommodate the future use.

(B) Require reasonable and nondiscriminatory spacing requirements for the location of new wireless support structures set forth in an ordinance, local rule, or design guidelines. Such spacing requirements shall not prohibit, or have the effect of prohibiting, the provision of wireless service to any location.

(C) Adopt reasonable written design guidelines with objective, technologically feasible criteria that reasonably match the aesthetics and character of the immediate area regarding all of the following:

- (1) The location of any ground-mounted small cell facilities;
- (2) The location of a small cell facility on a wireless support structure;
- (3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping;
- (4) The design and appearance of a wireless support structure including any height requirements



adopted by a municipality in accordance with division (F) of this section.

Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to comply with the appearance and concealment criteria established in the guidelines shall not be considered part of the small cell facility for purposes of facility size restrictions in this chapter.

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

(E) Require that a collocation or a new wireless support structure for which a permit is granted shall be completed within one hundred eighty days after issuance of the permit, unless the municipal corporation and the operator agree to extend this period or a delay is caused by make-ready work for a municipally owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that the operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty days after issuance of the permit. Otherwise, the permit shall be void unless the municipal corporation grants an extension in writing to the operator.

(F) Set restrictions for the height of a wireless support structure and the placement of a wireless facility as follows:

(1) For a new wireless support structure, the overall height of the wireless support structure and any collocated antennas shall not be more than forty feet in height above ground level.

(2) Notwithstanding division (F) of this section, and except that the cap shall not be below thirty-five feet in height above ground level, a municipal corporation may adopt design guidelines under division (C) of this section to cap the permissible height of small cell facilities in areas meeting the following criteria :



(a) The area is within three hundred feet of the proposed site for a new wireless support structure in the same public way or a connecting public way, and there are no wireless support structures or utility poles taller than thirty feet in height above ground level;

(b) The maximum allowable height for building construction in the underlying zoning district is thirty-five feet in height above ground level or less.

(3) For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be collocated at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure by more than five feet.

(G) Require an operator to comply with reasonable and nondiscriminatory requirements that prohibit public utilities or cable operators from installing structures and facilities in the public way because an area is either designated solely for undergrounding or structures and facilities are required to be placed elsewhere in the public way, if the following apply:

(1) The municipal corporation has required all structures and facilities, including structures and facilities owned by a municipal electric company, but not including structures and facilities owned by a municipal corporation or a transit authority, to be placed underground or elsewhere in the public way or a utility easement by a date certain that is three months prior to the submission of the application;

(2) Subject to the provisions of this chapter, the municipal corporation does not prohibit the replacement of wireless support structures or the collocation of small cell facilities on wireless support structures in the designated area;

(3) The municipal corporation permits operators to seek a waiver of the undergrounding or alternative location requirements for the placement of a new wireless support structure to support small cell facilities if the operator is unable to achieve its service objective using a small cell facility under the following circumstances:

(a) From a location in the public way where the prohibition does not apply;



(b) In a utility easement the operator has the right to access ; or

(c) In or on other suitable locations or structures made available by the municipal corporation at reasonable rates, fees, and terms. A municipal corporation shall process waivers in a reasonable and nondiscriminatory manner that does not have the effect of prohibiting the provision of wireless service.

(H) Subject to section 4939.0313 of the Revised Code, and except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. 1.1307(a)(4) of the federal communications commission's rules, a municipal corporation may require reasonable, technically feasible, and nondiscriminatory design or concealment measures in an historic district. Any such design or concealment measures may not have the effect of prohibiting any operator's technology, nor may any such measures be considered a part of the small cell facility for purposes of the size restrictions in the definition of small cell facility.

(I) If multiple requests are received by the municipal corporation to install two or more poles that would violate applicable spacing requirements under division (B) of this section, or to collocate two or more small cell facilities on the same wireless support structure, notwithstanding division (I) of section 4939.0313 of the Revised Code, the municipal corporation may resolve conflicting requests through whatever reasonable and nondiscriminatory manner the municipal corporation deems appropriate.

(J) Impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to municipal property caused by an operator or its agent.