

ORDINANCE NO. 2019-2146

**AN ORDINANCE REGARDING THE PERMITTING OF
WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES
WITHIN THE PUBLIC RIGHT-OF-WAY**

Statement of Purpose and Intent

The purpose and intent of this ordinance is to adopt the City of Plymouth's initial Small Cell Facility Permitting Policy, to designate the Plymouth Board of Public Works and Safety as the authorized body to adopt any future amendments to the Policy, and to designate the Plymouth Technical Review Committee as the permit authority for matters involving wireless facilities and wireless support structures within the public right-of-way, tasked with the day-to-day administration of the Policy.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Plymouth, Indiana as follows:

Section 1. The attached document is hereby adopted as the City's initial Small Cell Facility Permitting Policy. The authority to make any future amendments to the Policy is delegated to the Plymouth Board of Public Works and Safety.

Section 2. Title XV, entitled Land Usage, shall be amended by adding a new chapter, Chapter 154, entitled WIRELESS PERMITTING, as follows:

§ 154.1 WIRELESS PERMITTING

(A) As contemplated by Indiana Code § 8-1-32.3-8, and other applicable State and Federal law, as may be amended from time to time, the Technical Review Committee is hereby designated as the City's permitting authority regarding wireless facilities and wireless support structures within the public right-of-way.

(B) The Technical Review Committee shall publish, or otherwise make available, the City's Small Cell Facility Permitting Policy to wireless communications service providers or other interested persons, and shall, as may be advisable, recommend any amendments to the Policy to the Board of Public Works and Safety for adoption.

(C) As the City's permitting authority, the Technical Review Committee is tasked with the day-to-day administration and implementation of the Policy, as such it is authorized to create any necessary, applications, and other forms regarding the permitting, construction, installation, modification, or siting of wireless facilities or wireless support structures within the public right-of-way, and is further authorized to make administrative decisions regarding such matters.

Section 3. This ordinance is effective upon passage by the Common Council and approval by the Mayor.

PASSED AND ADOPTED this 25th day of March, 2019.



Mark Senter, Presiding Officer

ATTEST:



Jeanine M. Xaver, IAMC/CMC, Clerk-Treasurer

Presented by me to the Mayor of the City of Plymouth, Indiana on the 25th day of March, 2019,
at 6:38 o'clock pm.



Jeanine M. Xaver, IAMC/CMC, Clerk-Treasurer

Approved and signed by me this 25th day of March, 2019.



Mark Senter, Mayor

City of Plymouth, Indiana's Small Cell Facility Permitting Policy

Statement of Purpose and Intent

This Policy establishes standards for permitting Small Cell Facilities and associated supporting structures within the public right-of-way of the City of Plymouth, Indiana, in order to promote the orderly growth of needed wireless communications infrastructure, while ensuring the public health, safety, and welfare of the community.

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Section 1. Definitions

The following definitions apply throughout this Policy:

“Permit Authority” means the Plymouth Technical Review Committee.

“Antenna” means any communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless communications service.

“Applicant” means a wireless communications service provider or a person/entity who owns or otherwise makes available infrastructure for wireless communications service, including their agents, employees, and contractors, who submit an application for a permit.

“Business day” means a day other than a Saturday, a Sunday, or a legal holiday (as defined in Indiana Code § 1-1-9-1).

“Small Cell Facility”

(a) As used in this Policy, "small cell facility" means:

- (1) a personal wireless service facility (as defined by the Federal Telecommunications Act of 1996 as in effect on July 1, 2015); or
- (2) a wireless facility that satisfies the following requirements:
 - (A) Each antenna, including exposed elements, has a volume of six (6) cubic feet or less.
 - (B) The primary equipment enclosure located with the facility has a volume of twenty-eight (28) cubic feet or less.

(b) For purposes of subsection (a)(2)(B), the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure:

- (1) Electric meters.
- (2) Concealment equipment.
- (3) Telecommunications demarcation boxes.
- (4) Ground based enclosures.
- (5) Back up power systems.
- (6) Grounding equipment.
- (7) Power transfer switches.
- (8) Cut off switches.

(c) a freestanding structure that is designed to support or capable of supporting Small Wireless Facilities that does not exceed the greater of:

- (A) fifty (50) feet measured from grade; or
- (B) the height of any utility pole in place on July 1, 2017, and within five hundred (500) feet of the proposed small cell facility, plus ten (10) feet.

(The term does not include a Utility Pole or an Electrical Transmission Tower. The term does not include any below grade ancillary utilities.) (The term may also be referred to as a "SCF")

"Micro Wireless Facility" means a Small Cell Facility to which both of the following apply:

- (1) The Small Cell Facility is not larger in dimension than:
 - (A) twenty-four (24) inches in length;
 - (B) fifteen (15) inches in width; and
 - (C) twelve (12) inches in height.
- (2) If the Small Cell Facility has an exterior antenna, the exterior antenna is not longer than eleven (11) inches.

"Utility Pole" means a structure that is:

- (1) owned or operated by:
 - (A) a public utility;
 - (B) a communications service provider;
 - (C) a municipality;
 - (D) an electric membership corporation; or
 - (E) a rural electric cooperative; and
- (2) designed or used to:
 - (A) carry lines, cables, or wires for telephony, cable television, or electricity;
 - (B) provide lighting;
 - (C) provide traffic control; or
 - (D) provide signage.

(The term does not include a Wireless Support Structure or an Electrical Transmission Tower).

"Electrical Transmission Tower" means a structure that physically supports high voltage overhead power lines. The term does not include a Utility Pole.

“Wireless Support Structure”

- (a) As used in this chapter, "wireless support structure" means a freestanding structure that is:
 - (1) designed to support; or
 - (2) capable of supporting; wireless facilities.
- (b) The term does not include a Utility Pole or an Electrical Transmission Tower

“Substantial Modification of a Wireless Support Structure” means the mounting of a Small Cell Facility on a Wireless Support Structure in a manner that:

- (1) increases the height of the Wireless Support Structure by the greater of:
 - (A) ten percent (10%) of the original height of the Wireless Support Structure; or
 - (B) twenty (20) feet;
- (2) adds an appurtenance to the Wireless Support Structure that protrudes horizontally from the Wireless Support Structure more than the greater of:
 - (A) twenty (20) feet; or
 - (B) the width of the Wireless Support Structure at the location of the appurtenance; or
- (3) increases the square footage of the equipment compound in which the Small Cell Facility is located by more than two thousand five hundred (2,500) square feet.

(The term does not include: increasing the height of a Wireless Support Structure to avoid interfering with an existing antenna; increasing the diameter or area of a Wireless Support Structure to shelter an antenna from inclement weather, or connect an antenna to the Wireless Support Structure by cable.)

“Modifications of a Small Cell Facility” means the mounting of new or additional antennas and/or equipment to Wireless Support Structure that exceeds the design loading of the said structure. This will initiate a reanalysis of the Wireless Support Structure and the submittal of the Indiana Professional Engineer certified reanalysis to the permitting agency.

“Collocation” means the placement or installation of a Small Cell Facility on existing structures within the public right-of-way that include a Small Cell Facility or a Wireless Support Structure. (The Term includes the placement, replacement, or modification of a Small Cell Facility within an approved equipment compound.)

To the extent not inconsistent with this Policy, the definitions set forth within Indiana Code § 8-1-32.3 *et seq.* shall apply herein. Any other undefined words or terms shall be taken in their ordinary and reasonable meaning given the context.

Section 2. General Provisions

A. Below is the contact information for various City officials involved in the Small Cell Facility permitting process:

City of Plymouth – Clerk-Treasurer
Jeanine Xaver

City of Plymouth – City Attorney
Sean Surrisi

124 N. Michigan St.
Plymouth, IN 46563
574-936-2124
clerktreas@plymouthin.com

124 N. Michigan St.
Plymouth, IN 46563
574-936-3604
cityattorney@plymouthin.com

City of Plymouth – Street Supt.
Jim Marquardt
2124 Western Ave
Plymouth, IN 46563
574-936-2017
street@plymouthin.com

City of Plymouth – Utilities Supt.
Donnie, Davidson
900 Oakhill Ave
Plymouth, IN 46563
574-936-3017
wastewater@plymouthin.com

City of Plymouth – Building Comm.
Keith Hammonds
111 N. Center St.
Plymouth, IN 46563
574-936-2824
bldgcomm@plymouthin.com

City of Plymouth – City Engineer
Rick Gaul
900 Oakhill Ave
Plymouth, IN 46563
574-936-3604
publicworks@plymouthin.com

City of Plymouth – Fire & EMS
Rod Miller
111 N. Center St.
Plymouth, IN 46563
574-936-2156
fire@plymouthin.com

City of Plymouth – Police
Dave Bacon
215 W. Washington
Plymouth, IN 46563
574-936-2126 Ext. 1203
dbaconppd@plymouthin.com

B. Applications to place Small Cell Facilities and their ancillary elements within the right-of-way must be submitted, by appointment only, to the City Engineer and approved by the Technical Review Committee.

C. An application fee of \$100.00 per Small Cell Facility addressed in the application shall be due at the time the application is submitted.

D. If a City owned Utility Pole is used or modified/replaced for use, a yearly rental fee \$50.00 per pole shall be charged. The Small Cell Facility's owner shall be responsible for the modifications, added parts, and the structural integrity of said total structure.

E. A cash financial guarantee will be required to perform work in the right-of-way. The financial guarantee amount is based on the risk of damage to City infrastructure during construction. Once the project is completed a Completion Affidavit and As-Built drawings shall be submitted to the City Engineer; once verified damages are not present the financial guarantees will be refunded. (Note: Damages include the placement/revisions to right-of-way appurtenances that may be detrimental to the City and the public. One example: Failure to comply with ADA-United States

Access Board requirements would make the City not eligible for Federal and/or State funded projects.)

F. The City shall be indemnified and held harmless from all actions, claims, demands, liabilities and damages which may be imposed on or incurred by the Applicant, owner, designer/engineer, or installer as a consequence of any act or omission on the part of the Applicant, owner, designer/engineer, or installer.

G. The owner of the Small Cell Facilities and their ancillary facilities shall provide the power for said facility and any auxiliary street lighting attachments used by the City.

H. The Applicant shall be responsible for the proper maintenance of the facility and the proper attachments/revisions to the Small Cell Facility infrastructure elements.

I. All facilities shall be planned, designed, and constructed in compliance with the below information.

- **Americans with Disabilities Act (ADA)** – The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. As administered by the United States Department of Justice, Civil Rights Division. (www.ada.gov)
- **United States Access Board** - The Access Board is an independent federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards. (www.access-board.gov)
 - **Americans with Disabilities Act Accessibility Guidelines (ADAAG)** - These guidelines are used by the Department of Justice (DOJ) and the Department of Transportation (DOT) in setting enforceable standards that the public must follow.
 - **Proposed Right-of-Way Guidelines (PROWAG)** – Part of the United States Access Board, PROWAG develops new guidelines for public rights-of-way that will address various issues, including access for blind pedestrians at street crossings, wheelchair access to on-street parking, and various constraints posed by space limitations, roadway design practices, slope, and terrain.
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Section 3. Aesthetic Requirements

A. New Wireless Support Structures placed in the right-of-way shall match the existing City pole structure(s) in that area. If there are no City structures in that area the new Wireless Support Structure shall be a smooth rigid pole with black powder coating.

B. Antennas and equipment shall be shrouded and/or enclosed. Shrouds and/or enclosures shall match the Wireless Support Structure in color and design.

C. The top of the concrete foundation may not extend more than 3” above the ground level. If the concrete foundation is contiguous to a sidewalk the top of the foundation shall match level with the sidewalk.

D. All manufacture’s/Applicant’s/Owner’s decals, logos, or branding, shall be removed from the Small Cell Facility.

E. Wireless Support Structures shall be placed within half the side yard setback between any two properties. They shall not be placed in front of homes or buildings.

F. Wireless Support Structures shall be no closer than fifty feet to any other structure. If the distance between existing poles is less than 100’ the distance is half the distance between the two poles.

G. The proposed Small Cell Facility shall cause no objectionable noise that would impair the peaceful enjoyment of neighboring properties.

Section 4. Safety Requirements

A. All Small Cell Facilities and their elements shall adhere to the current Edition of the:

- a) Indiana Building Code;
- b) Telecommunication Industry Association Standards;
- c) American Concrete Institute (ACI) Building Code Requirements; and
- d) All other standards applicable for the safe and proper installation and use of the Small Cell Facility.

B. All Small Cell Facilities shall be protected from access by the non-authorized individuals (no climb – locked equipment/service cabinets).

C. The Small Cell Facilities shall be placed as close to the right-of-way line as possible and shall not be placed in the appurtenance-free area of the street as set forth in the Indiana Design Manual.

D. Any antenna equipment electric cabinets, equipment cabinets, equipment compound, etc. shall be located as to not interfere with City sidewalks:

- a) Meet United States Access Board requirements: length, width, slopes, vertical alignment, etc. of sidewalks;
- b) Meet the Indiana Design Manual provide sidewalk/traffic/street crossings sight distances; and
- c) Not block the extension of the sidewalk system.

E. All elements of the Small Cell Facility, including, but not limited to, its antenna, antenna equipment, connections, mountings, its foundation, and site location layout shall be designed by a certified and licensed Indiana Professional Engineer or Architect in good standing and qualified to work in said area.

F. All foundations shall be drilled pier reinforced concrete, bolted (with bolt covers).

G. A plaque, not to exceed 8 square inches, shall be affixed to all Wireless Support Structures identifying:

- a) The structure;
- b) The name of the owner, including the following contact information:
 - (1) Mailing address;
 - (2) Phone number;
 - (3) E-mail address; and
 - (4) 24 hour Emergency phone number.

Section 5. Preliminary Siting & Design Process

A. The City recommends that, prior to filing an application for a permit under this Policy, that an Applicant engage the City staff to assist the Applicant's Small Cell Facility development team with troubleshooting preliminary siting and design concerns. During such pre-application period of engagement, to the extent practicable, the City will aid the Applicant in discovering existing conditions and access to the proposed site area such as:

- a) Current city underground utilities;
- b) Congested underground areas;
- c) Planned City improvements; and
- d) Other limiting issues.

Section 6. Application & Notice Process

Applications

A. Applications for a permit to construct a new Small Cell Facility, to substantially modify an existing Small Cell Facility, for Collocation, or for construction, placement, or use of a Small Cell Facility, must be submitted, by appointment only, to the City Engineer, and approved by the Technical Review Committee.

B. All applications shall contain:

- a) The name, business address, and point of contact for the Applicant;
- b) The location/site plan of the proposed or affected Small Cell Facility; and
- c) A construction plan that describes the proposed wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.
- d) any other information required on the applicable City application forms, including a construction plan that describes all structures and equipment.

Evidence supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless support structure was not a viable option because collocation:

- (A) would not result in the same wireless service functionality, coverage, and capacity;

- (B) is technically infeasible; or
- (C) is an economic burden to the applicant.

C. The City shall review any application within ten (10) business days of its receipt to determine if the application is complete. If the City determines that an application is not complete, then it shall notify the Applicant in writing of all defects in the application. With respect to applications for a permit to construct a new Small Cell Facility, or to substantially modify an existing Small Cell Facility, the Applicant shall have thirty (30) days after receiving the notice of defects in which to cure the defects. With respect to applications for a permit for Collocation, or for construction, placement, or use of a Small Cell Facility, the Applicant shall have fifteen (15) days after receiving the notice of defects in which to cure the defects. An Applicant for any permit may request additional time in which to cure defects in the application.

D. With respect to applications for a permit to construct a new Small Cell Facility, or to substantially modify an existing Small Cell Facility, upon final submission and cure of any defects, the City shall issue its written notice of approval or denial of the permit, including its basis for the decision, within ninety (90) days thereafter. With respect to applications for a permit for Collocation, upon final submission and cure of any defects, the City shall issue its written notice of approval or denial of the permit, including its basis for the decision, within forty-five (45) days thereafter. With respect to applications for a permit for construction, placement, or use of a Small Cell Facility, upon final submission and cure of any defects, the City shall issue its written notice of approval or denial of the permit, including its basis for the decision, within sixty (60) days thereafter.

Notices

E. The City acknowledges that, pursuant to Indiana Code § 8-1-32.3-15(b), that the routine maintenance of Small Wireless Facilities, the replacement of Small Wireless Facilities with substantially similar equipment, and the installation, placement, maintenance, or replacement of Micro Wireless Facilities on cables strung between existing Utility Poles, are exempted from the City's permitting process. However, the City does require any person intending any such project to provide the City Engineer with ten (10) business day's-notice of the project. If, after reviewing the notice, the City Engineer contends that the project falls outside the scope of Indiana Code § 8-1-32.3-15(b)'s exemptions, he shall so notify the person proposing to undertake the project and send the matter to the full Technical Review Committee for a determination as to whether an application for a permit is required. (Note: in all operations exempt from the permitting requirements of this Policy, the provisions of Section 2. F. still apply and the owner shall observe the traffic control and other requirements of Section 7.).

F. If a site is requested for development by an entity and construction has not begun within 2 years of approval. The application approval for said location will be terminated as per I.C. 8-1-32.3-26(b)(4)

Section 7. Construction Process

A. The Small Cell Facility owner or owner's representative shall give a notice five (5) business days prior to any construction or maintenance work on said Small Cell Facility that will take place above ground in the City right-of-way or on City property to the:

- a) Street Department Superintendent;
- b) Utilities Superintendent;
- c) Building Commissioner; and
- d) City Engineer

B. Traffic control is required during all site operations. The traffic control items used shall meet the Indiana Manual Uniform Traffic Control Devices (MUTCD) must be in place when installing and/or servicing the Small Cell Facilities and their ancillary facilities. Submit Traffic Control Plans to the Street Department Supt. and the City Engineer five (5) business days prior to performing any construction activities.

C. A site meeting with the contractor and the City representatives noted above prior to the beginning of any construction activities is required.

D. The installer of the Small Cell Facility and their ancillary facilities shall pot hole and locate all City utilities crossing and all adjacent City utilities within 3' of the proposed installations.

E. When modifying supports of an existing traffic control device a certified INDOT signal electrical contractor shall be utilized during construction.

- a) All the wiring that is located within any modified support shall be replaced;
- b) All traffic control wiring and wire connections associated with the modifications shall be inspected and replaced if necessary to ensure a properly working traffic control system; and
- c) Intersection signal control must be maintained during construction.

F. Any new Small Cell Facility structure or existing infrastructure being used or modified to support Small Cell Facility structures shall be analyzed and certified by a qualified and licensed Indiana professional engineer to conform to the latest structural standards and wind loading requirements. This includes the structure, support arms, and the foundation.

G. Existing support structures modified to be used as a Small Cell Facility structure shall be designed to match the existing support in materials, coatings, section, shape, etc.

H. Auxiliary items such as cross arms, cross bars, mounting plates, etc. if not replaced shall be modified for a proper fit.

I. Replaced support, cross arms, signals, etc. are the property of the City and shall be delivered to the Street Department, 2124 Western Avenue, Plymouth, Indiana (574-936-2017).

J. At the end of construction, the City shall be notified identifying the:

- a) name of the structure (location);
- b) number of structure;
- c) owner's name; and
- d) owner's contact information.

K. Within sixty (60) days of completion of the facility, the Applicant shall submit to the City Engineer a Completion Affidavit and an As-Built Drawing certified by an Indiana Registered Land Surveyor verifying the coordinates, height, and site plan of the wireless facility.

L. The various City Departments will be notified for final inspections.

M. All damage by Installer to City of Plymouth infrastructure shall be repaired to equal or better condition.

Section 8. Communication During Operations

A The City Engineer and the City Attorney shall be notified of any and all changes in ownership of the Small Cell Facility and its elements. The plaque, as noted above, that is affixed to the Small Wireless Facility structure shall be updated to identify the structure, the new owner and the new owner's contact information.

B. Traffic control is required during maintenance operations. The traffic control items used shall meet the Indiana Manual Uniform Traffic Control Devices (MUTCD) must be in place when servicing the Small Cell Facilities and their ancillary facilities. When performing maintenance on the Small Cell Facility the City Engineer shall be informed five (5) working days prior to maintenance activities.

C. If for any reason the Small Cell Facility is not maintained and/or is damaged and not repaired, or is otherwise abandoned, the City of Plymouth may notify the owner of the deficiency in writing.

- a) The owner will then have thirty (30) days to respond with a repair/removal plan;
- b) Once the owner has responded the maintenance/repair plan. The Small Cell Facility repairs shall be performed within sixty (60) days
 - i) If a reanalysis is required the reanalysis shall be performed within the sixty (60) day period;
 - ii) then the owner shall have 60 days to perform said repairs.
- c) The City, through its Board of Public Works and Safety, has the right to order the removal of the facility if:
 - i) The owner does not respond within the thirty (30) day time period; or
 - ii) If the designer/engineer reanalysis is not performed within the sixty (60) day time period.
 - iii) If the Small Cell Facility is not repaired within sixty (60) days.
- d) Once the Removal Order is approved by the Board of Public Works and Safety, the owner will receive written notification of the Removal Order.
 - i) The owner is given thirty (30) days to remove and salvage the Small Cell Facility;

ii) After thirty (30) days the City will remove the Small Cell Facility and invoice the owner for the costs of the removal.