

INTRODUCED: January 13, 2020

AN ORDINANCE No. 2020-014

To amend City Code §§ 28-880, concerning general terms of permits, and 28-881, concerning the issuance of permits, for the purpose of modifying certain requirements and limitations for the installation of wireless facilities on City-owned utility poles.

Patron – Mr. Addison

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JAN 27 2020 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 28-880 and 28-881 of the Code of the City of Richmond (2015) be and are hereby **amended** and reordained as follows:

Sec. 28-880. General terms of permits.

Permits issued in accordance with this division shall contain, at a minimum, the following general terms and conditions:

(a) A requirement that the permittee shall comply with the requirements and limitations set forth in the permit as prescribed by the Director in accordance with this division.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JAN 27 2020 REJECTED: _____ STRICKEN: _____

(b) A requirement that the permittee shall comply with this division, the applicable requirements of the applicable standards established by the Federal Communications Commission, and all other applicable federal, state, or local laws, rules, regulations, and guidelines.

(c) A requirement that the permittee shall maintain the wireless facilities covered by a permit in a manner determined by the Director to preserve the public safety, health and welfare with respect to electric utility facilities within the city.

(d) A requirement that the permittee shall protect, at the permittee's expense, the City's electric utility infrastructure, and all other City-owned real property or City-owned personal property, from damage that may be caused by the permittee's wireless facilities or any installation or maintenance thereof.

(e) A provision that the Director shall take such action, as appropriate and to the extent permitted by law, to establish, maintain, and operate City-owned wireless network technologies, and self-monitoring, analysis and reporting technology and to [~~require~~] request access to wireless facilities and bandwidth from the permittee, in order to facilitate the City's use of City-owned wireless facilities, equipment, and the radio frequency spectrum.

(f) A requirement that the permittee, upon the written request of the Director, shall submit to the Director all such information and documentation as the Director may deem necessary, to the extent permitted by law, to ensure the permittee's compliance with the permit and with this division.

(g) A requirement that the permittee, upon the written request of the Director, shall submit to the Director all information and documentation pertaining to the wireless facilities installed or operated by the permittee, including, but not limited to, all equipment providing service to the City pursuant to the permit and each permit issued in accordance with this division.

(h) A provision authorizing the Director, upon the written request of the permittee, to modify the permit by a writing approved as to form by the City Attorney.

(i) A provision authorizing the Director to modify the permit, by a writing approved as to form by the City Attorney, as the Director deems necessary to the extent required or permitted by law or for the preservation of the public safety, health, and welfare.

(j) A requirement that any failure to comply with the permit requirements, the requirements of this division, or applicable federal, state, or local laws and rules, regulations, and guidelines shall result in revocation of the permit, which revocation shall not be appealable.

(k) A requirement that the Director shall provide the permittee with written notification of any revocation of the permit.

(l) A requirement that the permittee shall remove all wireless facilities from utility poles covered by the permit within 30 days after the date of any written notification from the Director of the revocation of the permit.

(m) A requirement that, upon the Director's determination, in accordance with criteria set forth in the rules, regulations, and guidelines issued in accordance with this division, that if a wireless facility covered by a permit in any way reduces the City's access to the radio frequency spectrum or in any way reduces the City's ability to establish, maintain, or operate one or more City-owned wireless facilities or other City-owned equipment on utility poles, the Director shall request access to such facility from the permittee, or request that the permittee mitigate such reduction or, if the request for access or mitigation is denied, revoke the permit, and provide the permittee with notice of such revocation in accordance with subsection (k) of this section. In the case of revocation in accordance with this subsection, the permittee shall remove all wireless facilities from utility poles covered by the permit in accordance with subsection (l) of this section.

(n) A requirement that each permittee that, as determined by the Director in accordance with criteria set forth in the rules, regulations, and guidelines issued in accordance with this division, has abandoned such permittee's wireless facility, has relocated a wireless facility to another utility pole without the express written consent of the Director, or has attached to a utility pole a wireless facility in violation of this division shall pay the applicable Department and contractor rates set forth in Appendix A of this Code to remove any wireless facilities.

(o) Any other terms or conditions that the Director deems appropriate to fulfill the requirements of this division or applicable federal, state, or local laws, rules, regulations, and guidelines.

Sec. 28-881. Issuance of permits.

Permits issued in accordance with this division shall be subject to the following limitations:

(a) The Director may issue and renew one or more permits to the same permittee, provided that the permittee has filed a completed application in accordance with this division and has paid, as applicable, the annual pole attachment rental fee and the applicable Department and contractor rates set forth in Appendix A to this Code to prepare, inspect, or perform other work necessary to allow for the attachment of a wireless facility to a utility pole.

(b) The applicant or permittee, as applicable, shall file an application and obtain or renew a permit for any wireless facility such permittee proposes to attach to a utility pole. A permit may cover more than one wireless facility.

(c) The applicant shall demonstrate on the applicant's application that the applicant has met all of the applicable requirements of this division, the Federal Telecommunications Act of 1996, as amended, the applicable standards established by the Federal Communications

Commission, and all other applicable federal, state, or local laws and rules, regulations, and guidelines.

(d) Each permit issued by the Director shall, at a minimum, state the following:

(1) The name of the permittee and the name, address, and phone number of the authorized representative of the permittee.

(2) The description of the wireless facility covered by the permit.

(3) Specifications concerning the location of the utility pole to which a wireless facility is attached and plans depicting where on the utility pole the wireless facility is installed.

(4) Such limitations and information, to the extent permitted by law, that the Director deems necessary for the administration of the permit in accordance with this division and for the preservation of the public safety, health, and welfare.

(e) The Director, upon the written request of the permittee, may modify a permit by a writing approved as to form by the City Attorney.

(f) The Director may modify a permit, by a writing approved as to form by the City Attorney, as the Director deems necessary to the extent required or permitted by law or for the preservation of the public safety, health, and welfare.

(g) Permits may be initially issued for a period of ~~[24]~~ 36 months and renewed ~~[annually]~~ for ~~[a period]~~ periods of ~~[12]~~ 24 months each from the date of the expiration of any such permit or renewal permit, as applicable, subject to the requirements of this division and the rules, regulations, and guidelines issued in accordance with this division and provided that an application has been filed for such issuance or renewal. In addition, a permit may be renewed ~~[annually]~~ pursuant to terms and conditions not set forth in a permittee's previously issued or renewed permit,

provided that such terms and conditions are approved by the Director and are not inconsistent with the requirements of this division.

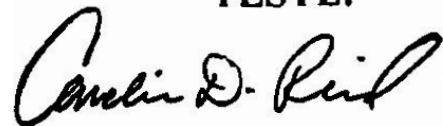
(h) Permits shall incorporate by reference the provisions of this division, the rules, regulations, and guidelines issued in accordance with this division, and the conditions set forth and information provided by the applicant or permittee in the application filed in accordance with this division.

(i) The permittee shall execute a release, waiver of liability, and indemnification agreement prior to the issuance of any permit. This subsection (i) shall not apply to governmental organizations.

(j) The Director shall conduct inspections of each wireless facility covered by a permit, including all documents associated therewith, at least annually and at such other times as the Director deems necessary to the extent required or permitted by law to ensure compliance with the requirements of this division and the rules, regulations, and guidelines issued in accordance with this division. Each permittee shall pay the annual pole attachment rental fee and the applicable Department and contractor rates set forth in Appendix A to this Code to prepare, inspect, or perform other work necessary to allow for the attachment of a wireless facility to a utility pole for each permit covering one or more wireless facilities.

§ 2. This ordinance shall be in force and effect upon adoption.

**A TRUE COPY:
TESTE:**

A handwritten signature in black ink, appearing to read "Amelia D. Reil".

City Clerk



Richmond City Council

The Voice of the People

Richmond, Virginia

Office of the Council Chief of Staff

Ordinance/Resolution Request

TO Haskell Brown, Interim Richmond City Attorney
Richmond Office of the City Attorney

THROUGH Lawrence R. Anderson
Council Chief of Staff

FROM Samson Anderson, Council Budget Analyst

COPY Andreas D. Addison, 1st District Representative
Daniel Wagner, 1st District Liaison
Meghan K. Brown, Deputy Chief of Staff

RECEIVED

DEC 31 2019

OFFICE OF THE CITY ATTORNEY

DATE December 18, 2019

PAGE/s 1 of 2

TITLE Small Cell Attachments

This is a request for the drafting of an Ordinance Resolution

REQUESTING COUNCILMEMBER/PATRON

SUGGESTED STANDING COMMITTEE

Andreas D. Addison, 1st District Representative

Government Operations

ORDINANCE/RESOLUTION SUMMARY

The Patron wishes to amend §§ 28-880 and 20-881 in order to change provisions in a recently adopted ordinance concerning small cell wireless facilities in the public right of way. The patron is proposing the following changes to the permitting structure for wireless companies to utilize utilities poles for their facilities:

- Allow the Director to request access to the wireless facilities as opposed to require access.
- Lengthen the initial permitting period from 24 months to 36 months and the renewal permitting period from 12 months to 24 months.
- Removes the fees associated with renewal applications as long as the permittee is in compliance.

BACKGROUND

Summary:

- On December 9, 2019, the Council adopted Ordinance 2019-310, granting the Department of Public Utilities Director the authority to develop and implement a permitting process for small cell wireless facilities with telecommunications providers.

- The Federal Communications Commission (FCC) approved regulations that requires localities and municipalities to adopt a method for promptly responding to requests from wireless providers for attachments to infrastructure in the public right of way.
- Ordinance 2019-310 was in response to the FCC regulations and this ordinance amends the City Code written by Ord. 2019-310.

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No
Budget Amendment Required Yes No
Estimated Cost or Revenue Impact:

Attachment/s Yes No

Richmond City Council Ordinance/Resolution Request Form, updated 10/5/2012 jvt