

I_132_2153-2

132nd General Assembly
Regular Session
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. B. No.

A BILL

To amend sections 4939.01, 4939.02, 4939.03, 1
4939.031, 4939.035, 4939.038, 4939.0311, 2
4939.0313, 4939.0315, 4939.0319, 4939.0321, 3
4939.0325, 4939.04, and 4939.08; to amend, for 4
the purpose of adopting new section numbers as 5
indicated in parentheses, sections 4939.035 6
(4939.036), 4939.038 (4939.037), 4939.039 7
(4939.038), 4939.0313 (4939.0312), 4939.0315 8
(4939.0313), 4939.0317 (4939.0315), 4939.0319 9
(4939.0316), 4939.0325 (4939.0322), and 10
4939.0327 (4939.0323) and to enact new sections 11
4939.039 and 4939.0317 and sections 4939.0314, 12
4939.0329, and 4939.09, and to repeal sections 13
4939.032, 4939.033, and 4939.037 of the Revised 14
Code to modify the law regarding wireless 15
service and the placement of small cell wireless 16
facilities in the public way. 17

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4939.01, 4939.02, 4939.03, 18
4939.031, 4939.035, 4939.038, 4939.0311, 4939.0313, 4939.0315, 19



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4939.0319, 4939.0321, 4939.0325, 4939.04, and 4939.08 be 20
amended; sections 4939.035 (4939.036), 4939.038 (4939.037), 21
4939.039 (4939.038), 4939.0313 (4939.0312), 4939.0315 22
(4939.0313), 4939.0317 (4939.0315), 4939.0319 (4939.0316), 23
4939.0325 (4939.0322), and 4939.0327 (4939.0323) be amended for 24
the purpose of adopting new section numbers as indicated in 25
parentheses; and new sections 4939.039 and 4939.0317 and 26
sections 4939.0314, 4939.0329, and 4939.09 of the Revised Code 27
be enacted to read as follows: 28

Sec. 4939.01. As used in sections 4939.01 to ~~4939.08~~ 29
4939.09 of the Revised Code: 30

(A) ~~"Accessory equipment" means any equipment used in~~ 31
~~conjunction with a wireless facility or wireless support~~ 32
~~structure. "Accessory equipment" includes utility or~~ 33
~~transmission equipment, power storage, generation or control~~ 34
~~equipment, cables, wiring, and equipment cabinets. "Abandoned"~~ 35
means any small cell facilities or wireless support structures 36
that are unused for a period of three hundred sixty-five days 37
without the operator otherwise notifying the municipal 38
corporation and receiving the municipal corporation's approval. 39

(B) "Agent" means a person that provides a municipal 40
corporation written authorization to work on behalf of a public 41
utility. 42

(C) "Antenna" means communications equipment that 43
transmits or receives radio frequency signals in the provision 44
of wireless service, ~~including associated accessory equipment.~~ 45

~~(D)~~ (D) "Cable operator," "cable service," and "franchise" 46
have the same meanings as in the "Cable Communications Policy 47
Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522. 48

- ~~(D) "Distributed antenna system" means a network or facility to which all of the following apply:~~ 49
50
- ~~(1) It distributes radio frequency signals to provide wireless service.~~ 51
52
- ~~(2) It meets the height and size characteristics of a small cell facility.~~ 53
54
- ~~(3) It consists of all of the following:~~ 55
- ~~(a) Remote antenna nodes deployed throughout a desired coverage area;~~ 56
57
- ~~(b) A high capacity signal transport medium connected to a central hub site;~~ 58
59
- ~~(c) Equipment located at the hub site to process or control the radio frequency signals through the antennas.~~ 60
61
- ~~(4) It conforms to the size limitations specified in division (N) of this section.~~ 62
63
- (E) "Collocation" or "collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure or utility pole. 64
65
66
- (F) "Decorative pole" means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: 67
68
69
70
71
- (1) Electric lighting; 72
- (2) Specially designed informational or directional signage; 73
74
- (3) Temporary holiday or special event attachments. 75

(G) "Eligible facilities request" has the same meaning as 76
in 47 U.S.C. 1455(a)(2). 77

~~(F) "Micro wireless facility" includes both a distributed 78
antenna system and a small cell facility, and the related 79
wireless facilities. 80~~

~~(G) "Micro wireless facility operator" means a public 81
utility or cable operator that operates a micro wireless 82
facility. 83~~

(H) "Historic district" means a building, property, or 84
site, or group of buildings, properties, or sites that are 85
either of the following: 86

(1) Listed in the national register of historic places or 87
formally determined eligible for listing by the keeper of the 88
national register, the individual who has been delegated the 89
authority by the federal agency to list properties and determine 90
their eligibility for the national register, in accordance with 91
section VI.D.1.a.i-v of the nationwide programmatic agreement 92
codified at 47 C.F.R. part 1, Appendix C; 93

(2) A registered historic district as defined in section 94
149.311 of the Revised Code. 95

(I) "Municipal electric utility" has the same meaning as 96
in section 4928.01 of the Revised Code. 97

~~(I)~~ (J) "OMUTCD" means the uniform system of traffic 98
control devices promulgated by the department of transportation 99
pursuant to section 4511.09 of the Revised Code. 100

(K) "Occupy or use" means, with respect to a public way, 101
to place a tangible thing in a public way for any purpose, 102
including, but not limited to, constructing, repairing, 103

positioning, maintaining, or operating lines, poles, pipes, 104
conduits, ducts, equipment, or other structures, appurtenances, 105
or facilities necessary for the delivery of public utility 106
services or any services provided by a cable operator. 107

~~(J)~~ (L) "Person" means any natural person, corporation, or 108
partnership and also includes any governmental entity. 109

~~(K)~~ (M) "Public utility" means a wireless service provider 110
as defined in division (A) (20) of section 4927.01 of the Revised 111
Code or any company described in section 4905.03 of the Revised 112
Code except in divisions (B) and (I) of that section, which 113
company also is a public utility as defined in section 4905.02 114
of the Revised Code; and includes any electric supplier as 115
defined in section 4933.81 of the Revised Code. 116

~~(L)~~ (N) "Public way" means the surface of, and the space 117
within, through, on, across, above, or below, any public street, 118
public road, public highway, public freeway, public lane, public 119
path, public alley, public court, public sidewalk, public 120
boulevard, public parkway, public drive, public easement, and 121
any other land dedicated or otherwise designated for a 122
compatible public use, which, on or after July 2, 2002, is owned 123
or controlled by a municipal corporation. "Public way" excludes 124
a private easement. 125

~~(M)~~ (O) "Public way fee" means a fee levied to recover the 126
costs incurred by a municipal corporation and associated with 127
the occupancy or use of a public way. 128

~~(N)~~ (P) "Small cell facility" means a wireless facility 129
that meets both of the following requirements of division (N) (1) 130
of this section and also division (N) (2) of this section: 131

(1) ~~(a)~~ Each antenna is located inside an enclosure of not 132

more than six cubic feet in volume or, in the case of an antenna 133
that has exposed elements, the antenna and all of its exposed 134
elements could fit within an enclosure of not more than six 135
cubic feet in volume. 136

~~(b)~~ (2) All other wireless equipment associated with the 137
facility is cumulatively not more than twenty-eight cubic feet 138
in volume. The calculation of equipment volume shall not include 139
electric meters, concealment elements, telecommunications 140
demarcation boxes, grounding equipment, power transfer switches, 141
cut-off switches, and vertical cable runs for the connection of 142
power and other services. 143

~~(2) If the wireless facility were placed on a wireless-~~ 144
~~support structure, the increased height would be not more than-~~ 145
~~ten feet or the overall resulting height would be not more than-~~ 146
~~fifty feet.~~ 147

~~(O)~~ (O) "Small cell facility operator" or "operator" means 148
a wireless service provider, or its designated agent, or cable 149
operator, or its designated agent, that operates a small cell 150
facility and provides wireless service as defined in division 151
(T) of section 4939.01 of the Revised Code. For the purpose of 152
this chapter, "operator" includes a wireless service provider or 153
cable operator that provides information services as defined in 154
the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 155
153(20), and services that are fixed in nature or use unlicensed 156
spectrum. 157

(R) "Utility pole" means a structure that is designed for, 158
or used for the purpose of, carrying lines, cables, or wires for 159
electric distribution or telecommunications service. "Utility 160
pole" excludes street signs and decorative poles. 161

~~(P)~~ (S) (1) "Wireless facility" means an antenna, accessory 162
equipment, or other wireless device or equipment used to provide 163
wireless service. 164

~~(Q)~~ at a fixed location that enables wireless 165
communications between user equipment and a communications 166
network, including all of the following: 167

(a) Equipment associated with wireless communications; 168

(b) Radio transceivers, antennas, coaxial or fiber-optic 169
cable, regular and backup power supplies, and comparable 170
equipment, regardless of technological configuration. 171

(2) The term includes small cell facilities. 172

(3) The term does not include any of the following: 173

(a) The structure or improvements on, under, or within 174
which the equipment is collocated; 175

(b) Coaxial or fiber-optic cable that is between wireless 176
support structures or utility poles or that is otherwise not 177
immediately adjacent to or directly associated with a particular 178
antenna. 179

(T) "Wireless service" means any services using licensed 180
or unlicensed wireless spectrum, whether at a fixed location or 181
mobile, provided to the public using wireless facilities. 182

~~(R)~~ (U) "Wireless service provider" means a person who 183
provides wireless service as defined in division (A) (20) of 184
section 4927.01 of the Revised Code. 185

(V) "Wireless support structure" means a pole, such as a 186
monopole, either guyed or self-supporting, street light pole, 187
traffic signal pole, a fifteen-foot or taller sign pole, or 188

utility pole capable of supporting ~~wireless-small cell~~ 189
facilities. As used in ~~section 4939.031 of the Revised Code~~ this 190
chapter, "wireless support structure" excludes ~~a-all of the~~ 191
following: 192

(1) A utility pole or other facility owned or operated by 193
a municipal electric utility; 194

(2) A utility pole or other facility used to supply 195
traction power to public transit systems, including railways, 196
trams, streetcars, and trolleybuses. 197

(W) "Work permit" means a permit issued by a municipal 198
corporation that must be obtained in order to perform any work 199
in, on, above, within, over, below, under, or through any part 200
of the public way, including, but not limited to, the act or 201
process of digging, boring, tunneling, trenching, excavating, 202
obstructing, or installing, as well as the act of opening and 203
cutting into the surface of any paved or improved surface that 204
is part of the public way. 205

Sec. 4939.02. (A) It is the public policy of this state to 206
do all of the following: 207

(1) Promote the public health, safety, and welfare 208
regarding access to and the occupancy or use of public ways, to 209
protect public and private property, and to promote economic 210
development in this state; 211

(2) Require all Ohio citizens to comply with consistent 212
and nondiscriminatory rules pertaining to occupancy and use of 213
the public ways, compliance with the OMUTCD, and to set forth 214
rules of conduct for public utilities generally in seeking to 215
occupy and use the public ways; 216

(3) Promote the availability of a wide range of utility, 217

communication, and other services to residents of this state at 218
reasonable costs, including the rapid implementation of new 219
technologies and innovative services; 220

~~(3)~~ (4) Promote the rapid deployment of small cell facility 221
infrastructure and related capital investment in this state by 222
ensuring that municipal corporations grant or deny consent to 223
install, operate, modify, or replace wireless facilities in a 224
timely manner; 225

(5) Ensure that access to and occupancy or use of public 226
ways advances the state policies specified in sections 4927.02, 227
4928.02, and 4929.02 of the Revised Code; 228

~~(4)~~ (6) Recognize the authority of a municipal corporation 229
to manage access to and the occupancy or use of public ways to 230
the extent necessary with regard to matters of local concern, 231
and to receive cost recovery for the occupancy or use of public 232
ways in accordance with law; 233

~~(5)~~ (7) Ensure in accordance with law the recovery by a 234
public utility of public way fees and related costs; 235

~~(6)~~ (8) Promote coordination and standardization of 236
municipal management of the occupancy or use of public ways, to 237
enable efficient placement and operation of structures, 238
appurtenances, or facilities necessary for the delivery of 239
public utility or cable services; 240

~~(7)~~ (9) Encourage agreement among parties regarding public 241
way fees and regarding terms and conditions pertaining to access 242
to and the occupancy or use of public ways, and to facilitate 243
the resolution of disputes regarding public way fees; 244

~~(8)~~ Expedite (10) Protect the integrity of residential and 245
historic locations and ensure that access to and occupancy or 246

<u>use of public ways in such districts is technologically and</u>	247
<u>aesthetically appropriate;</u>	248
<u>(11) Foster partnerships to expedite the installation and</u>	249
operation of micro, and smaller, wireless <u>small cell</u> facilities	250
in order to facilitate the deployment of advanced wireless	251
service throughout the state.	252
(B) This policy establishes fair terms and conditions for	253
the use of public ways and does not unduly burden persons	254
occupying or using public ways or persons that benefit from the	255
services provided by such occupants or users.	256
Sec. 4939.03. (A) No person shall occupy or use a public	257
way except in accordance with law.	258
(B) In occupying or using a public way, no person shall	259
unreasonably compromise the public health, safety, and welfare.	260
(C) (1) No person shall occupy or use a public way without	261
first obtaining, under this section or section 1332.24 or	262
4939.031 of the Revised Code, any requisite consent of the	263
municipal corporation owning or controlling the public way.	264
(2) Except as otherwise provided in division (C) (5) <u>(6)</u> of	265
this section and sections 4939.031 and 4939.035 <u>4939.036</u> of the	266
Revised Code, a municipal corporation, not later than sixty days	267
after the date of filing by a person of a completed request for	268
consent, shall grant or deny its consent.	269
(3) A municipal corporation shall not unreasonably	270
withhold or deny consent.	271
(4) If a request by a person for consent is denied, the	272
municipal corporation shall provide to the person in writing its	273
reasons for denying the request and such information as the	274

person may reasonably request to obtain consent. If a request 275
for consent is denied for an activity described in section 276
4939.031 of the Revised Code, the reasons required under this 277
division shall be supported by substantial, competent evidence 278
and the denial of consent shall not unreasonably discriminate 279
against the entity requesting the consent. 280

(5) Except in the case of a public utility subject to the 281
jurisdiction and recognized on the rolls of the public utilities 282
commission or of a cable operator possessing a valid franchise 283
awarded pursuant to the "Cable Communications Policy Act of 284
1984," 98 Stat. 2779, 47 U.S.C.A. 541, a municipal corporation, 285
for good cause shown, may withhold, deny, or delay its consent 286
to any person based upon the person's failure to possess the 287
financial, technical, and managerial resources necessary to 288
protect the public health, safety, and welfare. 289

(6) Initial consent for occupancy or use of a public way 290
shall be conclusively presumed for all lines, poles, pipes, 291
conduits, ducts, equipment, or other appurtenances, structures, 292
or facilities of a public utility or cable operator that, on 293
July 2, 2002, lawfully so occupy or use a public way. However, 294
such presumed consent does not relieve the public utility or 295
cable operator of compliance with any law related to the ongoing 296
occupancy or use of a public way. 297

Sec. 4939.031. (A) Subject to section 4939.0314 of the 298
Revised Code and approval of an application under this section, 299
an operator may, as a permitted use not subject to zoning review 300
or approval, collocate a small cell facility and construct, 301
maintain, modify, operate, or replace wireless support 302
structures in, along, across, upon, and under the public way. An 303
operator shall comply with generally applicable standards that 304

are consistent with this chapter and adopted by a municipal 305
corporation for construction and public safety in a public way. 306
All structures and facilities shall be constructed and 307
maintained so as not to impede or impair public safety or the 308
legal use of the public way by the municipal corporation, the 309
traveling public, or other public utilities. 310

(B) A municipal corporation, not later than ninety days 311
after the date of filing by an entity of a completed request for 312
consent for any of the following, under divisions (B) (1) and (2) 313
of this section or one hundred twenty days under division (B) (3) 314
of this section to be done in a public way, shall, subject 315
to sections 4939.03, 4939.033 to 4939.037, and 4939.0313 to 316
4939.0319 of the Revised Code this chapter, grant or deny its 317
consent to: 318

(1) Attaching micro wireless Collocate small cell 319
facilities to on a wireless support structure; 320

(2) Locating two or more wireless service providers' micro- 321
wireless facilities on the same wireless support structure; 322

(3) Replacing or modifying a micro wireless Replace or 323
modify a small cell facility on a wireless support structure, if 324
consent is required under this section; 325

(4) Constructing, modifying, or replacing (3) Construct, 326
modify, or replace a wireless support structure associated with 327
a micro wireless small cell facility. 328

(B) (C) If a municipal corporation fails to approve or 329
deny a request for consent under this section or a request for a 330
relevant work permit within the required time period, provided 331
the time period is not tolled under section 4939.036 of the 332
Revised Code, the request shall be deemed granted upon the 333

requesting entity providing notice to the municipal corporation 334
that the time period for acting on the request has lapsed. 335

(D) Except as provided in this chapter as well as any 336
franchise, pole attachment, or other agreements between a 337
municipal corporation and a cable operator or public utility, a 338
municipal corporation shall not require any zoning or other 339
approval, consent, permit, certificate, or condition for the 340
construction, replacement, location, attachment, or operation of 341
a ~~micro wireless~~ small cell facility in the public way, or 342
otherwise prohibit or restrain the activities as described in 343
this section, except as otherwise provided in division (B) of 344
section 4939.0311 of the Revised Code. 345

Sec. ~~4939.035~~ 4939.036. (A) The ~~ninety-day~~ time period 346
required in section 4939.031 of the Revised Code may be tolled 347
only: 348

(1) By mutual agreement between the entity requesting 349
consent and the municipal corporation; 350

(2) In cases where the municipal corporation determines 351
that the application is incomplete; or 352

(3) ~~By the municipal corporation in the event it has an~~ 353
~~extraordinary number of wireless facilities contained in pending~~ 354
~~requests, in which case~~ If the number of requests for consent 355
for small cell facilities or wireless support structures 356
received is likely to result in difficulty processing 357
applications within the time limits set forth in section 358
4939.031 of the Revised Code due to the lack of resources of the 359
municipal corporation, then the municipal corporation may toll 360
the ~~ninety-day period for a reasonable amount of days not~~ 361
~~exceeding an additional ninety days~~ time limits as follows: 362

(a) The time period may be tolled for up to twenty-one 363
days for the first fifteen small cell facility or wireless 364
support structure requests received by a municipal corporation 365
above the thresholds provided in divisions (A)(3)(a)(i) to (v) 366
of this section and for the first thirty small cell facility or 367
wireless support structure requests received by a municipal 368
corporation above the thresholds provided in division (A)(3)(a) 369
(vi) of this section, within any consecutive thirty-day period: 370

(i) For a municipal corporation having a population of 371
thirty thousand persons or less when it receives applications 372
for at least fifteen small cell facility or wireless support 373
structure requests; 374

(ii) For a municipal corporation having a population of 375
thirty thousand one to forty thousand persons when it receives 376
applications for at least twenty small cell facility or wireless 377
support structure requests; 378

(iii) For a municipal corporation having a population of 379
forty thousand one to fifty thousand persons when it receives 380
applications for at least twenty-five small cell facility or 381
wireless support structure requests; 382

(iv) For a municipal corporation having a population of 383
fifty thousand one to sixty thousand persons when it receives 384
applications for at least thirty small cell facility or wireless 385
support structure requests; 386

(v) For a municipal corporation having a population of 387
sixty thousand one to one hundred thousand persons when it 388
receives applications for at least sixty small cell facility or 389
wireless support structure requests; 390

(vi) For a municipal corporation having a population of 391

one hundred thousand one persons or more when it receives 392
applications for at least ninety small cell facility or wireless 393
support structure requests. 394

(b) Further, for every additional fifteen requests that 395
the municipal corporation receives above the thresholds provided 396
in divisions (A) (3) (a) (i) to (v) of this section, and every 397
additional thirty requests that the municipal corporation 398
receives above the threshold provided in division (A) (3) (a) (vi) 399
of this section within any consecutive thirty-day period, the 400
municipal corporation may toll the time period for those 401
requests for up to fifteen days in addition to the time period 402
provided in division (A) (3) (a) of this section. 403

(c) In no instance shall a municipal corporation toll the 404
time period for any small cell facility or wireless support 405
structure request by more than ninety consecutive days. Upon 406
request, a municipal corporation shall provide an operator 407
written notice of the time limit for a small cell facility or 408
wireless support structure request. 409

(B) To toll the time period for incompleteness, the 410
municipal corporation shall provide written notice to the ~~entity~~ 411
person requesting consent not later than thirty days after 412
receiving the request, clearly and specifically delineating all 413
missing documents or information. The missing documents or 414
information shall be reasonably related to determining whether 415
the request meets the requirements of applicable federal and 416
state law. Any notice of incompleteness requiring other 417
information or documentation, including information of the type 418
described in section ~~4939.0315~~ 4939.0313 of the Revised Code or 419
documentation intended to illustrate the need for the request or 420
to justify the business decision for the request, does not toll 421

the time period. 422

(C) The time period ~~begins running again~~ resumes when the 423
entity makes a supplemental submission in response to the 424
municipal corporation's notice of incompleteness. 425

(D) If a supplemental submission is inadequate, the 426
municipal corporation shall notify the entity not later than ten 427
days after receiving the supplemental submission that the 428
supplemental submission did not provide the information 429
identified in the original notice delineating missing documents 430
or information. The time period may be tolled in the case of 431
second or subsequent notices under the procedures identified in 432
divisions (A) to (C) of this section. Second or subsequent 433
notices of incompleteness may not specify missing documents or 434
information that ~~were~~ was not delineated in the original notice 435
of incompleteness. 436

Sec. ~~4939.038~~ 4939.037. Nothing in this chapter precludes 437
a municipal corporation from applying its generally applicable 438
health, safety, and welfare regulations when granting consent 439
for a ~~micro wireless~~ small cell facility or wireless support 440
structure. 441

Sec. ~~4939.039~~ 4939.038. Notwithstanding sections 4939.031 442
to 4939.037 of the Revised Code, a municipal corporation shall 443
approve within sixty days, and may not deny, an eligible 444
facilities request under 47 C.F.R. 1.40001. 445

Sec. 4939.039. Any person who owns or operates small cell 446
facilities or wireless support structures in the public way 447
shall indemnify, protect, defend, and hold the municipal 448
corporation and its elected officials, officers, employees, 449
agents, and volunteers harmless against any and all claims, 450

lawsuits, judgments, costs, liens, losses, expenses, fees to 451
include reasonable attorney fees and costs of defense, 452
proceedings, actions, demands, causes of action, liability and 453
suits of any kind and nature, including personal or bodily 454
injury or death, property damage or other harm for which 455
recovery of damages is sought, to the extent that it is caused 456
by the negligence of the person who owns or operates small cell 457
facilities and wireless service in the public way, any agent, 458
officer, director, representative, employee, affiliate, or 459
subcontractor of the operator, or their respective officers, 460
agents, employees, directors, or representatives while 461
installing, repairing, or maintaining facilities in a public 462
way. 463

Sec. 4939.0311. (A) Consent shall not be required for 464
either of the following activities conducted in the public way: 465

(1) Routine maintenance of wireless facilities; 466

(2) The replacement of wireless facilities with wireless 467
facilities that are consistent with the municipal corporation's 468
current design guidelines and that are either of the following: 469

(a) Substantially similar to the existing wireless 470
facilities; 471

(b) The same size or smaller than the existing wireless 472
facilities. 473

(B) A municipal corporation may require a work permit for 474
an any activity described in division (A) of this section and 475
for any activity for which consent is authorized under section 476
4939.031 of the Revised Code. Any such permit shall be subject 477
to any applicable law in this chapter. 478

Sec. ~~4939.0313~~ 4939.0312. (A) An entity A municipal 479

corporation shall permit a person seeking to construct, modify, 480
collocate, or replace more than one ~~micro-small cell facility or~~ 481
more than one wireless ~~facility support structure~~ within the 482
jurisdiction of a single municipal corporation ~~may to file, at~~ 483
the ~~entity's~~ person's discretion, a consolidated request 484
application for consent under ~~division (A)(4) of section~~ 485
4939.031 of the Revised Code for up to thirty small cell 486
facilities requests in a single application or up to thirty 487
wireless support structure requests in a single application and 488
receive a single permit for the construction, modification, 489
collocation, or replacement of the ~~micro-wireless-small cell~~ 490
facilities or ~~associated~~ wireless support structures. However, 491
this single application may only address multiple small cell 492
facilities or multiple wireless support structures if they each 493
involve substantially the same type of small cell facilities or 494
substantially the same type of wireless support structures. A 495
municipal corporation may separately address small cell facility 496
collocations or wireless support structures for which incomplete 497
information has been received or which are denied. 498

(B) In the case of a consolidated ~~request~~ application, the 499
fees provided for in section ~~4927.0319-4939.0316~~ of the Revised 500
Code may be cumulative. However, a municipal corporation, at its 501
discretion, may opt to reduce such fees in order to encourage 502
persons to submit consolidated applications. 503

(C) In the case of a consolidated application, each small 504
cell facility or wireless support structure proposed to be 505
constructed, modified, collocated on, or replaced shall 506
constitute a separate request for consent for purposes of 507
tolling the response deadline as authorized under section 508
4939.036 of the Revised Code. A request by a single operator for 509
a new or replacement support structure and associated small cell 510

facility constitutes one request. 511

Sec. ~~4939.0315~~ 4939.0313. With respect to the provision of 512
any ~~micro wireless~~ small cell facility or the associated 513
wireless support structure in a public way, a municipal 514
corporation shall not do any of the following: 515

(A) Require ~~the requestor~~ a person to submit information 516
about, or evaluate a ~~requestor's~~ person's business decisions 517
with respect to, the ~~requestor's~~ person's service, customer 518
demand, or quality of service to or from a particular area or 519
site as a condition for approval of the request; 520

(B) Require ~~the requestor~~ a person to submit information 521
about the need for the ~~micro wireless~~ small cell facility or the 522
associated wireless support structure, including additional 523
wireless coverage, capacity, or increased speeds, as a condition 524
for approval of the request; 525

(C) Require ~~the requestor~~ a person to justify the need for 526
the new ~~micro wireless~~ small cell facility or associated 527
wireless support structure, or to submit business information, 528
including strategy documents, propagation maps, or 529
telecommunications traffic studies as a condition for approval 530
of the request; 531

(D) ~~Evaluate the request based on the availability of~~ 532
~~other potential locations for the placement of the micro~~ 533
~~wireless facility or associated wireless support structure,~~ 534
~~including the options to submit a request under division (A) (1)~~ 535
~~or (2) of section 4939.031 of the Revised Code or under division~~ 536
~~(A) (4) of that section to modify an existing micro wireless~~ 537
~~facility or associated wireless support structure except that a~~ 538
~~municipal corporation may propose an alternate location within~~ 539

~~fifty feet of the proposed location, which the requestor shall use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs;~~ 540
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~~(E)~~ Require the removal of existing wireless support structures or ~~wireless-small cell facilities~~, wherever located, as a condition for approval of the request, unless the existing wireless support structures or small cell facilities have been unused or abandoned. This division shall not preclude a municipal corporation from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless ~~facilities~~ facility. 544
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~~(F)~~ (E) Impose restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the federal aviation administration; 553
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~~(G)~~ ~~Impose requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities, unless the municipal corporation imposes similar requirements on other permits for occupancy of the public way;~~ 556
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~~(H)~~ (F) Unreasonably discriminate among providers of functionally equivalent services; 561
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~~(I)~~ ~~Impose unreasonable requirements regarding the maintenance or appearance of the micro wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities;~~ 563
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~~(J)~~ ~~Require that the requestor purchase, lease, or use~~ (G) 568

Condition the grant of consent on the requirement that a person 569
purchase or lease facilities, networks, or services owned or 570
operated by the municipal corporation, in whole or in part, or 571
owned or operated, in whole or in part, by any entity in which 572
the municipal corporation has an economic governance interest; 573

~~(K)~~ (H) Condition the grant of consent on the requestor's 574
agreement to permit other wireless facilities to be placed at, 575
attached to, or located on the associated wireless support 576
structure; 577

~~(L)~~ Limit the duration of any permit that is granted, 578
except that a municipal corporation may require that 579
construction commence within two years; 580

~~(M)~~ (I) Impose setback or fall-zone requirements for the 581
associated wireless support structure that are different from 582
requirements imposed on other similar types of structures in the 583
public way; 584

~~(N)~~ (J) Impose environmental testing, sampling, or 585
monitoring requirements that exceed rules and regulations 586
established under state or federal law or that are not imposed 587
on other types of construction or elements of the construction; 588

~~(O)~~ (K) Impose any regulations pertaining to radio 589
frequency emissions or exposure to such emissions that are 590
contrary to or exceed rules of the federal communications 591
commission; 592

~~(P)~~ Impose (L) Except as set forth in section 4939.0314 of 593
the Revised Code, impose separation requirements that require 594
any space to be maintained regarding spacing between an 595
operator's facilities and other wireless facilities or, 596
wireless support structures; 597

~~(Q) Prevent the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure, utility poles, ground-mounted equipment, or other utility facilities within the public way.~~ 598
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Sec. 4939.0314. 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: 603
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(A) Reserve space for future public safety or transportation uses in the public way or on a wireless support structure or pole owned or operated 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. 606
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(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. 618
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(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: 624
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- (1) The location of any ground-mounted small cell facilities; 628
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- (2) The location of a small cell facility on a wireless support structure; 630
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- (3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; 632
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- (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. 635
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- 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. 638
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- (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. 644
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- (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 653
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extend this period or a delay is caused by make-ready work for a 657
municipally owned wireless support structure or decorative pole 658
or by the lack of commercial power or backhaul availability at 659
the site, provided that the operator has made a timely request 660
within sixty days after the issuance of the permit for 661
commercial power or backhaul services, and the additional time 662
to complete installation does not exceed three hundred sixty 663
days after issuance of the permit. Otherwise, the permit shall 664
be void unless the municipal corporation grants an extension in 665
writing to the operator. 666

(F) Set restrictions for the height of a wireless support 667
structure and the placement of a wireless facility as follows: 668

(1) For a new wireless support structure, the overall 669
height of the wireless support structure and any collocated 670
antennas shall not be more than forty feet in height above 671
ground level. 672

(2) Notwithstanding division (F) of this section, and 673
except that the cap shall not be below thirty-five feet in 674
height above ground level, a municipal corporation may adopt 675
design guidelines under division (C) of this section to cap the 676
permissible height of small cell facilities in areas meeting the 677
following criteria: 678

(a) The area is within three hundred feet of the proposed 679
site for a new wireless support structure in the same public way 680
or a connecting public way, and there are no wireless support 681
structures or utility poles taller than thirty feet in height 682
above ground level; 683

(b) The maximum allowable height for building construction 684
in the underlying zoning district is thirty-five feet in height 685

above ground level or less. 686

(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. 687
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(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: 692
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(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; 698
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(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; 705
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(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 710
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facility under the following circumstances: 715

(a) From a location in the public way where the 716
prohibition does not apply; 717

(b) In a utility easement the operator has the right to 718
access; or 719

(c) In or on other suitable locations or structures made 720
available by the municipal corporation at reasonable rates, 721
fees, and terms. A municipal corporation shall process waivers 722
in a reasonable and nondiscriminatory manner that does not have 723
the effect of prohibiting the provision of wireless service. 724

(H) Subject to section 4939.0313 of the Revised Code, and 725
except for facilities excluded from evaluation for effects on 726
historic properties under 47 C.F.R. 1.1307(a)(4) of the federal 727
communications commission's rules, a municipal corporation may 728
require reasonable, technically feasible, and nondiscriminatory 729
design or concealment measures in an historic district. Any such 730
design or concealment measures may not have the effect of 731
prohibiting any operator's technology, nor may any such measures 732
be considered a part of the small cell facility for purposes of 733
the size restrictions in the definition of small cell facility. 734

(I) If multiple requests are received by the municipal 735
corporation to install two or more poles that would violate 736
applicable spacing requirements under division (B) of this 737
section, or to collocate two or more small cell facilities on 738
the same wireless support structure, notwithstanding division 739
(I) of section 4939.0313 of the Revised Code, the municipal 740
corporation may resolve conflicting requests through whatever 741
reasonable and nondiscriminatory manner the municipal 742
corporation deems appropriate. 743

(J) Impose reasonable requirements for bonds, escrow 744
deposits, letters of credit, or any other type of financial 745
surety to ensure removal of abandoned or unused wireless 746
facilities or damage to municipal property caused by an operator 747
or its agent. 748

Sec. ~~4939.0317~~ 4939.0315. No municipal corporation may 749
institute a moratorium on the filing, acceptance of filings, 750
consideration, or approval of requests for consent described in 751
section 4939.031 of the Revised Code. 752

Sec. ~~4939.0319~~ 4939.0316. Any fee charged by a municipal 753
corporation ~~for a request for consent~~ under section 4939.031 of 754
the Revised Code for granting or processing an application for 755
consent shall not exceed ~~the lesser~~ a one-time fee of two 756
hundred fifty dollars per ~~micro wireless~~ small cell facility ~~or~~ 757
~~the amount charged by the~~. A municipal corporation for a 758
~~building permit for any other type of commercial development or~~ 759
~~land use development~~ may adjust this fee ten per cent every five 760
years, rounded to the nearest five dollars. 761

Sec. 4939.0317. The approval term of an attachment to a 762
wireless support structure shall be for a period of not less 763
than ten years, with presumption of renewal for successive five- 764
year terms, subject to terms providing for early termination or 765
nonrenewal for cause or by mutual agreement and unless otherwise 766
agreed to by both the operator and the municipal corporation, 767
except for generally applied permitting to safeguard the public 768
health, safety, and welfare. An operator may remove its small 769
cell facilities at any time subject to applicable work permit 770
requirements and may stop paying annual charges or fees under 771
division (B) of section 4939.0322 of the Revised Code. 772

Sec. 4939.0321. No municipal corporation shall have or 773

exercise any jurisdiction, authority, or control over the 774
design, engineering, construction, installation, or operation of 775
any ~~micro wireless~~ small cell facility located in an interior 776
structure not owned or controlled by the municipal corporation. 777

Sec. ~~4939.0325~~ 4939.0322. (A) A municipal corporation 778
shall permit, ~~for the purpose of providing wireless service, an~~ 779
~~attachment by a micro wireless facility operator to~~ consistent 780
with this chapter and for the purpose of providing wireless 781
service, a collocation of a small cell facility by an operator 782
to a wireless support structure owned or operated by the 783
municipal corporation and located in the public way, provided 784
that the operator comply with any applicable design guidelines 785
under division (C) of section 4939.0314 of the Revised Code and 786
reasonable terms and conditions for such collocations adopted by 787
the municipal corporation that are consistent with the design 788
guidelines and this chapter. The municipal corporation may 789
condition approval of the collocation on replacement or 790
modification of the wireless support structure at the operator's 791
cost if the municipal corporation determines that replacement or 792
modification is necessary for compliance with its written 793
construction or safety standards. A replacement or modification 794
of the wireless support structure shall conform to the 795
applicable design guidelines and the municipal corporation's 796
applicable specifications for the type of structure being 797
replaced. The municipal corporation may retain ownership of a 798
replacement wireless support structure. 799

(B) The total annual charges to reimburse the municipal 800
corporation for the attachment shall not exceed two hundred 801
dollars per small cell facility collocated on a wireless support 802
structure owned or operated by the municipal corporation and 803
located in the public way. A municipal corporation may adjust 804

this charge ten per cent every five years, rounded to the 805
nearest five dollars. 806

~~(B) (1) The total annual charges and fees for the~~ 807
~~attachment and any activities related to the attachment shall be~~ 808
~~the lesser of the actual, direct, and reasonable costs related~~ 809
~~to the use of the wireless support structure by the operator or~~ 810
~~two hundred dollars per attachment.~~ 811

~~(2) In any controversy concerning the appropriateness of a~~ 812
~~charge or fee under this section, the municipal corporation~~ 813
~~shall have the burden of proving that the charge or fee is~~ 814
~~reasonably related to its actual, direct, and reasonable costs.~~ 815

~~(C) The charges, fees, terms, and conditions for~~ 816
~~attachments under this section, including the processes and time~~ 817
~~for approval of applications and permits for the attachments,~~ 818
~~shall be nondiscriminatory as to all attaching operators~~ 819
~~regardless of the types of services provided by the operators~~ 820
Except for any applicable work permit under division (B) of 821
section 4939.0311 of the Revised Code and financial surety under 822
division (J) of section 4939.0314 of the Revised Code, a 823
municipal corporation may not charge an operator any other 824
charge or fee for a small cell facility or associated wireless 825
support structure except as set forth in section 4939.0316 and 826
division (B) of section 4939.0322 of the Revised Code. The fees 827
set forth in sections 4939.0316 and 4939.0322 of the Revised 828
Code are not public way fees. 829

~~(D) Nothing in this chapter affects the need for an entity~~ 830
~~seeking to place a micro wireless facility on a public utility~~ 831
~~owned utility pole to obtain from the public utility any~~ 832
~~necessary authority to place the facility. Placement of small~~ 833
cell facilities in the public way or attachment of small cell 834

facilities to a wireless support structure and any fees 835
associated therewith shall not subject a municipal corporation 836
to any state or local tax liabilities or assessments. 837

(E) Nothing in this chapter affects the need for an 838
operator seeking to collocate a small cell facility on a public- 839
utility-owned utility pole to obtain from the public utility any 840
necessary authority to collocate. 841

Sec. ~~4939.0327~~ 4939.0323. A municipal corporation shall 842
not enter into an exclusive arrangement with any entity for the 843
right to attach to the municipal corporation's wireless support 844
structures. 845

Sec. 4939.0329. A person may construct, modify, or 846
maintain a utility pole or wireless support structure along, 847
across, and under a public way in excess of the size limits, to 848
the extent permitted by the municipal corporation's applicable 849
regulations. 850

Sec. 4939.04. (A) (1) A municipal corporation shall provide 851
public utilities or cable operators with open, comparable, 852
nondiscriminatory, and competitively neutral access to its 853
public ways. 854

(2) Nothing in division (A) (1) of this section prohibits a 855
municipal corporation from establishing priorities for access to 856
or occupancy or use of a public way by a public utility or cable 857
operator when the public way cannot accommodate all public way 858
occupants or users, which priorities as applied to public 859
utilities or cable operators shall not be unduly discriminatory 860
and shall be competitively neutral. 861

(B) The management, regulation, and administration of a 862
public way by a municipal corporation with regard to matters of 863

local concern shall be presumed to be a valid exercise of the 864
power of local self-government granted by Section 3 of Article 865
XVIII of the Ohio Constitution. 866

Sec. 4939.08. (A) Nothing in sections 4939.01 to 4939.07 867
of the Revised Code applies to a franchise or to any agreement 868
with a public utility, cable operator, or ~~micro-wireless-small~~ 869
cell facility operator, for the balance of its term, if the 870
franchise or agreement meets all of the following, as 871
applicable: 872

(1) (a) With respect to a public utility or cable operator, 873
the franchise was granted, or the agreement was authorized by 874
ordinance or otherwise and was entered into, by a municipal 875
corporation prior to July 2, 2002. 876

(b) With respect to a ~~micro-wireless-small cell~~ facility 877
operator, the agreement was authorized by ordinance or otherwise 878
and was entered into by a municipal corporation and the ~~micro-~~ 879
~~wireless-small cell~~ facility operator prior to the effective 880
date of the amendments to this section by S.B. 331 of the 131st 881
general assembly. 882

(2) The franchise or agreement authorizes the occupation 883
or use of public ways. 884

(3) The public utility or ~~micro-wireless-small cell~~ 885
facility operator agrees with the applicable public way fees, or 886
nonmonetary compensation, if any, or the cable operator pays the 887
applicable fee or utilizes the credit, offset, or deduction 888
specified in division (B) (4) of section 4939.05 of the Revised 889
Code. 890

(B) (1) Except as otherwise provided in division (A) of 891
section 4939.06 of the Revised Code, nothing in sections 4939.01 892

to 4939.07 of the Revised Code applies to an ordinance both 893
governing public ways and enacted by a municipal corporation 894
prior to September 29, 1999, unless, on or after that date, the 895
ordinance is materially modified. 896

(2) Division (B)(1) of this section does not apply to 897
~~micro-wireless-small cell~~ facility operators and their 898
facilities. 899

(C) Nothing in sections 4939.01 to 4939.07 of the Revised 900
Code authorizes a municipal corporation to levy a fee, other 901
than a public way fee authorized by section 4939.05 of the 902
Revised Code, on a pipeline company or an operator of a pipeline 903
facility regulated under the "Accountable Pipeline Safety and 904
Partnership Act of 1996," 110 Stat. 3793, 49 U.S.C.A. 60101, or 905
on an operating partner or affiliated business unit operating 906
under guidelines of the federal energy regulatory commission as 907
they relate to the construction and operation of a pipeline. 908

(D) Nothing in sections 4939.01 to 4939.07 and this 909
section of the Revised Code prohibits a municipal corporation 910
from doing either of the following: 911

(1) Charging a cable operator a franchise fee in 912
accordance with the "Cable Communications Policy Act of 1984," 913
98 Stat. 2779, 47 U.S.C.A. 542; 914

(2) Allowing a credit, offset, or deduction against the 915
payment of a construction permit fee for any franchise fee a 916
cable operator pays to the municipal corporation. 917

Sec. 4939.09. If requested by a municipal corporation, in 918
order to accomplish construction and maintenance activities 919
directly related to improvements for the health, safety, and 920
welfare of the public, an operator shall relocate or adjust its 921

facilities within the public way at no cost to the municipal 922
corporation, as long as such request similarly binds all users 923
in or on such public way. Such relocation or adjustment shall be 924
completed in accordance with local law. 925

Section 2. That existing sections 4939.01, 4939.02, 926
4939.03, 4939.031, 4939.035, 4939.038, 4939.039, 4939.0311, 927
4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0321, 928
4939.0325, 4939.0327, 4939.04, and 4939.08 and sections 929
4939.032, 4939.033, and 4939.037 of the Revised Code are hereby 930
repealed. 931