

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 478**

**Representatives Smith, R., LaTourette**

**Cosponsors: Representatives Becker, Blessing, Boggs, Carfagna, Celebrezze, Duffey, Faber, Gavarone, Hambley, Koehler, Lang, Lipps, Miller, Patton, Pelanda, Perales, Reineke, Rezabek, Romanchuk, Schaffer, Seitz, Sykes, Thompson, West**

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**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  
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)~~ "Cable operator," "cable service," and "franchise" 46

have the same meanings as in the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522. 47 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 73

<u>signage;</u>	74
<u>(3) Temporary holiday or special event attachments.</u>	75
<u>(G) "Eligible facilities request" has the same meaning as</u> in 47 U.S.C. 1455(a) (2) .	76 77
<del>(F) "Micro wireless facility" includes both a distributed</del> <del>antenna system and a small cell facility, and the related</del> <del>wireless facilities.</del>	78 79 80
<del>(G) "Micro wireless facility operator" means a public</del> <del>utility or cable operator that operates a micro wireless</del> <del>facility.</del>	81 82 83
<u>(H) "Historic district" means a building, property, or</u> <u>site, or group of buildings, properties, or sites that are</u> <u>either of the following:</u>	84 85 86
<u>(1) Listed in the national register of historic places or</u> <u>formally determined eligible for listing by the keeper of the</u> <u>national register, the individual who has been delegated the</u> <u>authority by the federal agency to list properties and determine</u> <u>their eligibility for the national register, in accordance with</u> <u>section VI.D.1.a.i-v of the nationwide programmatic agreement</u> <u>codified at 47 C.F.R. part 1, Appendix C;</u>	87 88 89 90 91 92 93
<u>(2) A registered historic district as defined in section</u> <u>149.311 of the Revised Code.</u>	94 95
<u>(I) "Municipal electric utility" has the same meaning as</u> in section 4928.01 of the Revised Code.	96 97
<del>(I)</del> <u>(J) "OMUTCD" means the uniform system of traffic</u> <u>control devices promulgated by the department of transportation</u> <u>pursuant to section 4511.09 of the Revised Code.</u>	98 99 100

~~(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)~~ (Q) "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)~~ "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

<u>rules of conduct for public utilities generally in seeking to</u>	215
<u>occupy and use the public ways;</u>	216
<u>(3)</u> 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
<del>(3)</del> <u>(4)</u> Promote the rapid deployment of small cell facility	221
<u>infrastructure and related capital investment in this state by</u>	222
<u>ensuring that municipal corporations grant or deny consent to</u>	223
<u>install, operate, modify, or replace wireless facilities in a</u>	224
<u>timely manner;</u>	225
<u>(5)</u> 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
<del>(4)</del> <u>(6)</u> 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
<del>(5)</del> <u>(7)</u> Ensure in accordance with law the recovery by a	234
public utility of public way fees and related costs;	235
<del>(6)</del> <u>(8)</u> 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
<del>(7)</del> <u>(9)</u> 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
<del>(8) Expedite</del> <u>(10) Protect the integrity of residential and</u>	245
<u>historic locations and ensure that access to and occupancy or</u>	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</u> the installation and	249
operation of <del>micro, and smaller, wireless</del> <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
<b>Sec. 4939.03.</b> (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) <del>(5)</del> <u>(6)</u> of	265
this section and sections 4939.031 and <del>4939.035</del> <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  
structure. 440  
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  
(A) (4) of that section to modify an existing micro wireless  
facility or associated wireless support structure except that a  
municipal corporation may propose an alternate location within  
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;~~

~~(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.

~~(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;

~~(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;~~

~~(H)~~ ~~(F)~~ Unreasonably discriminate among providers of  
functionally equivalent services;

~~(I)~~ ~~Impose unreasonable requirements regarding the  
maintenance or appearance of the micro wireless facility or~~

~~associated wireless support structure and accessory equipment,~~ 565  
~~including the types of materials to be used and the screening or~~ 566  
~~landscaping of wireless facilities;~~ 567

~~(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~~ 598  
~~facility or wireless support structure in a residential area or~~ 599  
~~within a specific distance from a residence or other structure,~~ 600  
~~utility poles, ground-mounted equipment, or other utility~~ 601  
~~facilities within the public way.~~ 602

**Sec. 4939.0314.** With respect to the placement of any small 603  
cell facility or wireless support structure in a public way, a 604  
municipal corporation may do any of the following: 605

(A) Reserve space for future public safety or 606  
transportation uses in the public way or on a wireless support 607  
structure or pole owned or operated by a municipal corporation 608  
in a documented and approved plan in place at the time an 609  
application is filed. A reservation of space shall not preclude 610  
placement of a pole or collocation of a small cell facility. If 611  
replacement of the municipal corporation's pole or wireless 612  
support structure is necessary to accommodate the collocation of 613  
the small cell facility and the future use, the operator shall 614  
pay for the replacement of the pole or wireless support 615  
structure, and the replaced pole or wireless support structure 616  
must accommodate the future use. 617

(B) Require reasonable and nondiscriminatory spacing 618  
requirements for the location of new wireless support structures 619  
set forth in an ordinance, local rule, or design guidelines. 620  
Such spacing requirements shall not prohibit, or have the effect 621  
of prohibiting, the provision of wireless service to any 622  
location. 623

(C) Adopt reasonable written design guidelines with 624  
objective, technologically feasible criteria that reasonably 625  
match the aesthetics and character of the immediate area 626  
regarding all of the following: 627

(1) The location of any ground-mounted small cell 628  
facilities; 629

(2) The location of a small cell facility on a wireless 630  
support structure; 631

(3) The appearance and concealment of small cell 632  
facilities, including those relating to materials used for 633  
arranging, screening, or landscaping; 634

(4) The design and appearance of a wireless support 635  
structure including any height requirements adopted by a 636  
municipality in accordance with division (F) of this section. 637

Any such guidelines shall be applied in a 638  
nondiscriminatory manner. Materials utilized to comply with the 639  
appearance and concealment criteria established in the 640  
guidelines shall not be considered part of the small cell 641  
facility for purposes of facility size restrictions in this 642  
chapter. 643

(D) Propose an alternate location to the proposed location 644  
of a new wireless support structure that is within one hundred 645  
feet of the proposed location or within a distance that is 646  
equivalent to the width of the public way in or on which the new 647  
wireless support structure is proposed, whichever is greater, 648  
which the operator shall use if it has the right to use the 649  
alternate location on reasonable terms and conditions and the 650  
alternate location does not impose technical limits or 651  
additional costs. 652

(E) Require that a collocation or a new wireless support structure for which a permit is granted shall be completed within one hundred eighty days after issuance of the permit, unless the municipal corporation and the operator agree to extend this period or a delay is caused by make-ready work for a municipally owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that the operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty days after issuance of the permit. Otherwise, the permit shall be void unless the municipal corporation grants an extension in writing to the operator. 653  
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(F) Set restrictions for the height of a wireless support structure and the placement of a wireless facility as follows: 667  
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(1) For a new wireless support structure, the overall height of the wireless support structure and any collocated antennas shall not be more than forty feet in height above ground level. 669  
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(2) Notwithstanding division (F) of this section, and except that the cap shall not be below thirty-five feet in height above ground level, a municipal corporation may adopt design guidelines under division (C) of this section to cap the permissible height of small cell facilities in areas meeting the following criteria: 673  
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(a) The area is within three hundred feet of the proposed site for a new wireless support structure in the same public way or a connecting public way, and there are no wireless support structures or utility poles taller than thirty feet in height 679  
680  
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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 687  
antenna and any associated shroud or concealment material are 688  
permitted to be collocated at the top of the existing wireless 689  
support structure and shall not increase the height of the 690  
existing wireless support structure by more than five feet. 691

(G) Require an operator to comply with reasonable and 692  
nondiscriminatory requirements that prohibit public utilities or 693  
cable operators from installing structures and facilities in the 694  
public way because an area is either designated solely for 695  
undergrounding or structures and facilities are required to be 696  
placed elsewhere in the public way, if the following apply: 697

(1) The municipal corporation has required all structures 698  
and facilities, including structures and facilities owned by a 699  
municipal electric company, but not including structures and 700  
facilities owned by a municipal corporation or a transit 701  
authority, to be placed underground or elsewhere in the public 702  
way or a utility easement by a date certain that is three months 703  
prior to the submission of the application; 704

(2) Subject to the provisions of this chapter, the 705  
municipal corporation does not prohibit the replacement of 706  
wireless support structures or the collocation of small cell 707  
facilities on wireless support structures in the designated 708  
area; 709

(3) The municipal corporation permits operators to seek a 710  
waiver of the undergrounding or alternative location 711

requirements for the placement of a new wireless support 712  
structure to support small cell facilities if the operator is 713  
unable to achieve its service objective using a small cell 714  
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 Code. 889  
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