

**AN ORDINANCE AMENDING THE CODE OF ROME, GEORGIA AT CHAPTER 23, ZONING, BY ENACTING A NEW ARTICLE XI, SMALL WIRELESS FACILITIES; ENACTING REASONABLE REGULATIONS AND OBJECTIVE STANDARDS FOR THE PERMITTING OF SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHTS OF WAY OF THE CITY OF ROME, WHILE ENSURING THE USE OF PUBLIC RIGHTS OF WAY IS CONSISTENT WITH THE DESIGN, APPEARANCE, AND OTHER FEATURES OF NEARBY LAND USES, PROTECTS THE INTEGRITY OF HISTORIC, CULTURAL, AND SCENIC RESOURCES AND DOES NOT HARM RESIDENTS' QUALITY OF LIFE; TO PROVIDE AN EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; TO RESTATE AND REAFFIRM THE CODE OF ROME, GEORGIA, AS MODIFIED HEREBY; TO REPEAL ALL CODE PROVISIONS, ORDINANCES, OR PARTS THEREOF, IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.**

**Be it ordained by the City Commissioner for the City of Rome, Georgia, and it is established as follows:**

**SECTION I:**

The Code of Rome, Georgia is hereby amended at Chapter 23 by enacting a new Article XI, Small Wireless Facilities, to comply with the State of Georgia's GEORGIA STREAMLINING WIRELESS FACILITIES AND ANTENNAS ACT, Act 53 (SB 66, 2019 General Session, codified as O.C.G.A. Title 36, Chapter 66C), as follows:

**ARTICLE XI**

**SMALL WIRELESS FACILITIES AND ANTENNAS**

**Section 1. Purpose and Compliance**

Sec. 1.1. O.C.G.A. §32-4-92(a)(10) authorizes the City of Rome, Georgia (the "City") to establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances in, on, along, over, or under the public roads and rights of way of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act, O.C.G.A. Title 36, Chapter 66C (hereafter, the "SWFAA"), addresses the placement of small wireless facilities in the public rights of way of the City.

Sec. 1.2. The City finds it is in the best interest of the City and its residents and businesses to establish requirements, specifications, and reasonable conditions regarding placement of small wireless facilities, support structures and poles in the public rights of way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the City and to reasonably manage and protect the public rights of way and its uses in the City.

Sec. 1.3. The objective of this Article is to (i) implement the SWFAA and (ii) ensure use of the public rights of way is consistent with the design, appearance and other features of nearby land uses, protect the integrity of historic, cultural, and scenic resources and limit the harm to residents' quality of life.

Sec. 1.4. Intent. In enacting this article, the City is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

(A) prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;

(B) prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(C) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;

(D) protect against environmental damage, including damage to trees;

(E) preserve the character of the neighborhoods in which such facilities are installed;  
and

(F) facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

Sec. 1.5. It is not the intent of this Act to prohibit or have the effect of prohibiting the provision of personal wireless services in the City; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless telecommunications facilities on the basis of environmental effects of radio frequency ("RF") emissions where it is demonstrated that the wireless telecommunications facility complies or will comply with the applicable FCC regulations; prohibit, effectively prohibit or unreasonably delay collocations or modifications to existing wireless telecommunications facilities that the City is required to approve pursuant to federal and state law; or require the location or siting of wireless telecommunications facilities on City-owned public property.

Sec. 1.6. Preferred Installation Sites. It shall be the policy of the City to discourage the installation of new poles and above-ground cabinets in the City’s rights-of-way, and to encourage installations on locations in the following order of preference, consistent with all other applicable law, including but not limited to this article:

- (A) Collocated with existing small wireless facilities on or off the rights-of-way;
- (B) On existing structures outside the rights-of-way;
- (C) On existing poles located within the rights-of-way;
- (D) On replacement poles installed in the rights-of-way; or
- (E) On new poles placed in the rights-of-way.

Sec. 1.7. Relationship to Other Laws. In the event of a conflict between this article and the remainder of the Official Code of Rome, Georgia, this article shall control as applied to small wireless facilities in the rights-of-way, only. Otherwise, this article shall supplement and be read in conjunction with the terms of the City Code.

Sec. 1.8. All provisions of this article are to be interpreted and applied consistent with all applicable law. The inclusion or absence of any right, responsibility, or other provision arising under applicable law shall not be deemed to constitute a waiver of that or any other provision of applicable law.

## **Section 2. Definitions**

Sec. 2.1 As used in this Article, the following terms have the following meanings:

- (A) “Antenna” has the same meaning as in O.C.G.A. § 36-66C-2(2).
- (B) “Applicable Laws” means all applicable local, state, and federal law, including but not limited to building, fire, electrical, plumbing, or mechanical codes adopted by the City, and the Telecommunications Act of 1996 as codified in 47 U.S.C. § 151 *et seq.*
- (C) “Applicant” means any person who submits an application.
- (D) “Application” means a request submitted by an applicant (i) for a permit to install or collocate small wireless facilities; or (ii) to approve the installation or modification of a utility pole or wireless support structure.
- (E) “Article” means Article XI of the Official Code of Rome, Georgia (hereinafter “City Code”).
- (F) “Chapter” means Chapter 23 - ZONING, of the City Code of Rome, Georgia.

- (G) “City-Owned Pole” means (i) a utility pole owned or operated by the City in the rights-of-way, including, but not limited to, a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the City in the ROW that supports only wireless facilities. The term shall only include vertical portions of covered poles; horizontal extensions are not included.
- (H) “Collocate” has the same meaning as in O.C.G.A. § 36-66C-2(11).
- (I) “Concealment Element” means any design feature, including but not limited to painting, landscaping, shielding requirements, and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or the structure which supports a wireless facility, that is intended to make a wireless facility or any supporting structure less visible to the casual observer.
- (J) “Day” means calendar day.
- (K) “Fee” means a one-time charge.
- (L) “Historic district” has the same meaning as in O.C.G.A. § 36-66C-2(20).
- (M) “Micro wireless facility” has the same meaning as in O.C.G.A. § 36-66C-2(23)
- (N) “O.C.G.A.” means the Official Code of Georgia Annotated.
- (O) “Permit” has the same meaning as in O.C.G.A. § 36-66C-2(24).
- (P) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (Q) “Pole” has the same meaning as in O.C.G.A. § 36-66C-2(26).
- (R) “Rate” means a recurring charge.
- (S) “Rights-of-Way” or “ROW” has the same meaning as in O.C.G.A. § 36-66C-2(31).
- (T) “Small Wireless Facility” has the same meaning as in O.C.G.A. § 36-66C-2(32).
- (U) “Support Structure” has the same meaning as in O.C.G.A. § 36-66C-2(34).
- (V) “Utility Pole” means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control,

signage, or a similar function regardless of ownership, including City-owned poles. Such term shall not include structures or poles supporting only wireless facilities.

- (W) “Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- (X) “Wireless Infrastructure Provider” has the same meaning as in O.C.G.A. § 36-66C-2(35).
- (Y) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.
- (Z) “Wireless Services” means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.
- (AA) “Wireless Services Provider” means a person that provides wireless services.

### **Section 3. Permitted Use; Application and Fees**

Sec. 3.1 Permitted Use. Collocation of a small wireless facility or a new, modified, or replacement utility pole or wireless support structure for the collocation of a small wireless facility shall be a permitted use subject to the restrictions in this article and applicable state and federal law.

- (A) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a permit therefore, except as otherwise provided in this article.
- (B) Permit Application. All small wireless facility permit applications filed pursuant to this article shall be filed with the Rome/Floyd Building Inspections Department. Failure to submit an application properly through the system will render an application incomplete and therefore subject to denial to the extent permissible by law.
- (C) Except as provided in O.C.G.A. § 36-66C-3(c), the applicant may designate portions of its application materials that it reasonably believes contain trade secrets or other proprietary or confidential information “confidential under O.C.G.A. § 50-18-72” by submitting with it an affidavit affirmatively declaring

that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. The applicant shall be solely responsible for clearly identifying and labeling as “proprietary” or “confidential” each page of such materials but shall undertake all reasonable efforts to minimize the scope and frequency of such designations. If the applicant submits such an affidavit, the City and the applicant shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

- (D) The City shall undertake reasonable steps to safeguard that information, to the extent permitted by law, but in no event shall be found liable for alleged harm incurred as the result of a disclosure, particularly if such disclosure is pursuant to a valid open records request or applicable order from a court.

Sec. 3.2        Application Requirements. The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the elements specified in Section 36-66C-6(d) of the Georgia Code.

Sec. 3.3        Activities Not Requiring an Application. An application shall not be required for those activities specified as exempt under O.C.G.A. § 36-66C-6(e)-(f), but a wireless provider is required to obtain all other permits as required by law, such as electrical and street opening permits, for such activities. Notwithstanding the foregoing, consistent with generally applicable requirements that other occupants of the rights of way, such as utilities, are required to provide notice to the City of activities taking place within the rights-of-way without a permit, wireless providers shall provide such notice to the City for activities undertaken without a permit. Such generally applicable requirements include, but are not limited to, those imposed on other rights-of-way occupants under the latest Utility Accommodation Policy and Standards manual adopted by the City in Section 106-3(a) of this Code.

Sec. 3.4        Information Updates. Any amendment to information contained in a permit application shall be submitted in writing to the City no more than thirty (30) days after the event necessitating the change. Submission of information to amend an application under this section shall be deemed an agreement by the applicant to toll any applicable shot clock for the greater of either: the number of days elapsed between the occurrence of the event necessitating the change, and the date updated information is submitted to the City; or thirty (30) days.

Sec. 3.5        Consolidated Applications. Each installation or set of installations shall require a separate application. Applications may be consolidated only to the extent permissible by law. For applications including placement of new poles, no more than ten (10) poles and associated small wireless facilities may be submitted in a single application. For collocations on existing poles, no more than twenty (20) sites may be included. Consolidated applications shall be for a geographic area no more than two miles in diameter.

Sec. 3.6        Fees. Fees for applications shall be assessed as required by applicable law. In the event the City’s rates for permit processing are not prescribed by state or Federal law,

those fees shall be established and may be revised from time to time by the City to ensure they reasonably approximate the City's costs in processing and reviewing applications.

- (A) Application fees due under this article shall be payable upon submission of the application.
- (B) Any failure to fully pay application fees at the time of application submission shall absolve the City from any requirement to process the application until those fees are paid, to the extent permissible by law.
- (C) The City reserves the right to increase fees upon notice, to the extent permissible by law.

Sec. 3.7 ROW Occupancy Rates; Attachment Rates for Collocations on City Poles. Rates to occupy the City rights-of-way and attach to vertical infrastructure therein shall be assessed as prescribed by O.C.G.A. § § 36-66C-5(a)(4) and 36-66C-5(a)(5). Payments of annual rates subsequent to the payment required for the initial year shall be due on the anniversary date of the permit issuance. The City reserves the right to increase fees upon notice, to the extent permissible by law.

Sec. 3.8 Fees for Make-Ready Work. For any collocations on City poles in the rights-of-way, applicants and City shall conform to the procedures and requirements set forth in O.C.G.A. § 36-66C-7(n). The City reserves the right to increase fees upon notice, to the extent permissible by law.

#### **Section 4. Action on Permit Applications**

Sec. 4.1 Review of Small Wireless Facility Applications. The City, through the Department of Transportation, shall review the small wireless facility permit applications pursuant to the requirements of this article and all other applicable law, and shall issue a permit on nondiscriminatory terms and conditions should it determine in its discretion that the application meets those requirements, or if otherwise required by operation of law.

Sec. 4.2 Review of Eligible Facilities Requests. Notwithstanding any other provision of this article, the City, through the Department of Transportation, shall process applications appropriately qualifying as "eligible facilities requests" as defined in federal law, pursuant to applicable federal requirements. Any application which an applicant believes to qualify as such a request, shall clearly and conspicuously indicate such in any application materials and communications with the City. Applications qualifying as eligible facilities requests shall be reviewed and acted upon in a manner consistent with federal law as specified in 47 C.F.R. 1.6100(c), or a successor provision.

## **Section 5. Small Wireless Facilities in the ROW; Maximum Height; Other Requirements**

Sec. 5.1 Maximum Size of Permitted Use. Small wireless facilities, and new, modified, or replacement utility poles and wireless support structures for the collocation of small wireless facilities may be placed in the rights-of-way as a permitted use subject to the restrictions on size and placement specified in O.C.G.A. § 36-66C-6(a) [see e.g., O.C.G.A. § 36-66C-7(h)].

- (A) Notwithstanding the foregoing, the provisions of this article shall not be interpreted to permit aggregation of multiple height increases, such as by seeking to install a new utility pole or wireless support structure, and then attempting to exceed what would have been the maximum permissible height for that new or replacement pole by requesting an increase to attach facilities. Height limits for existing utility poles or wireless support structures shall be assessed based on the height of the structure before the first wireless facility is installed, and applicants shall not be permitted to request additional height increases based on the total height of a pole, including existing wireless facilities above the top of the utility pole or wireless support structure.

Sec. 5.2 Zoning. Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this section, shall be subject to applicable zoning requirements.

Sec. 5.3 Undergrounding Provisions. Absent a petition for waiver, which will be addressed in a nondiscriminatory manner and consistent with applicable law, applicant shall comply with nondiscriminatory undergrounding requirements that prohibit communications service providers and electric service providers from installing poles in a right of way in an area designated solely for underground or buried facilities of communications service providers and electric service providers provided such requirements do not prohibit the replacement of existing structures with structures whose design the City expressly consents to.

## **Section 6. Effect of Permit**

Sec. 6.1 Authority Granted; No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this article and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

Sec. 6.2 Duration. Collocation, installation, modification, or replacement for which a permit is issued under this article shall be completed within six months after issuance, unless an extension is granted pursuant to O.C.G.A. § 36-66C-7(k)(2). The permit issued shall be valid for ten (10) years and shall be renewed in accordance with O.C.G.A. § 36-66C-7(k)(2)(B).



Sec. 6.3 Indemnification. By submission of an application and receipt of a permit, an applicant acknowledges its consent to indemnify and hold harmless the City to the maximum extent permissible by law, consistent with O.C.G.A. § 36-66C-15.

### **Section 7. Removal, Relocation or Modification of Small Wireless Facilities in the ROW**

Sec. 7.1 Removal. Removal of small wireless facilities shall be governed by O.C.G.A. § 36-66C-5(e).

Sec. 7.2 Relocation. Relocation of poles, support structures, or small wireless facilities shall be governed by O.C.G.A. § 36-66C-7(l) and (o).

Sec. 7.3 Abandonment of Facilities. Abandonment of facilities shall be governed by O.C.G.A. § 36-66C-7(p).

Sec. 7.4 Emergency Removal or Relocation of Facilities. If the City determines that a wireless provider's activity in a right-of-way creates an imminent risk to public safety, the City may provide written notice to the wireless provider and demand that the wireless provider address such risk within 24 hours of the written notice. If the wireless provider fails to reasonably address the risk within 24 hours of the written notice, the authority may take or cause to be taken action to reasonably address such risk and charge the wireless provider the reasonable documented cost of such actions. Notwithstanding the foregoing, the City retains the right and privilege to cut power to or move any small wireless facility located within the rights-of-way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency in circumstances where notice to the wireless provider is not reasonably practical.

Sec. 7.5 Damages to Rights-of-Way. The City is authorized to require a wireless provider to repair all damage to a right-of-way directly caused by the activities of the wireless provider, as provided in O.C.G.A. § 36-66C-7(r).

### **Section 8. Development Standards**

Sec. 8.1 In addition to the requirements detailed elsewhere in this article, the following development standards shall apply to all small wireless facilities governed by this article to the extent permissible by law, specifically including any facilities deployed in historic districts or affecting any pole defined as "decorative" under applicable state law:

- (A) No small wireless facility shall be attached to a pole hosting a streetlight, traffic light, or other public safety equipment, except where approval is required by applicable law.
- (B) All small wireless facilities shall incorporate concealment elements to the maximum extent feasible and as appropriate to the site and type of facility, and to

the extent permissible by law. Specifically, all small wireless facilities shall employ and maintain camouflage design techniques to minimize visual impacts and provide appropriate screening. Such techniques shall be employed so that the installation, operation, and appearance of the small wireless facilities will be consistent with the character of the surrounding area or the structure to which the small wireless facility is attached.

- (C) Wireless providers may place new poles or wireless support structures in the rights-of-way, but only where there are existing above-ground utility poles and the poles must be removed if other such poles are removed, unless those poles would meet the requirements of this subsection as permissible new poles. Specifically, and furthermore, a new pole is only permitted if the applicant can show that:
- i. Existing utility poles or other support structures cannot be used to support the small wireless facilities or would require a modification that would make the addition of an additional utility pole or wireless support structure less intrusive or safer. A determination by the City that a particular small wireless facility would violate the conditions in O.C.G.A. § 36-66C-7(j) may satisfy this requirement;
  - ii. The pole or support structure to be installed will be similar in size and design to existing poles, and placed appropriately to minimize intrusiveness and to avoid creating undue hazard to persons or property; and
  - iii. The applicant demonstrates that the denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. § 332(c)(7) as interpreted by precedent binding in the Eleventh Circuit Court of Appeals, or that approval is otherwise required by operation of law.
- (D) Monopoles. Every new utility pole or wireless support structure should be a monopole rather than a lattice tower or guy-wire support tower, unless otherwise authorized.
- (E) Access. No facility shall be built so as to cause the right-of-way in which the facility is located to fail to comply with the Americans with Disabilities Act or otherwise obstruct access.
- (F) Security. All facilities shall be designed so as to be resistant to and minimize the opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions, which would result in hazardous conditions, visual blight, or attractive nuisances.
- (G) Screening. Any equipment that is not installed underground shall be screened by structures, topography, or vegetation to the maximum extent feasible. Coaxial cables, conduit lines, and electrical boxes for ground-mounted antennas shall be placed underground or within approved structures to the extent feasible.
- (H) Public Art, Flagpoles, Artificial Natural Features. Wireless providers shall be encouraged to design small wireless facilities to serve as public art, flagpoles, or

artificial natural features such as trees or rocks where such designs are appropriate and feasible.

- (I) Colors & Materials. Unless otherwise required by applicable law, small wireless facilities shall have a non-reflective finish and shall be a neutral color consistent with the predominant background color.
- (J) Lighting. Signal lights or illumination shall be prohibited unless required by the FCC or the Federal Aviation Administration.
- (K) Signage. The facilities shall not bear any signage, other than certification, warning, information, safety, and directional signage, or other non-commercial signage required by law, or expressly permitted by the City.
- (L) Power Supply. Any facility occupying a City-owned pole is only permissible to the extent the existing function of the pole is not impeded. In particular, street lights and traffic lights' power supplies may not be used by applicants. When attaching to City-owned poles, applicants are responsible for securing separately metered power for their facilities, and are responsible for any and all costs incurred in modifying a pole to support additional power supplies. In all other cases, applicants are responsible for ensuring that their power supply arrangements with electric utilities do not result in any incremental cost increase to the City.

## **Section 9. Variance Process**

Sec. 9.1        Upon good cause shown, the Rome City Commission reserves the right to grant a variance to an application under this article provided:

- (A) Any applicant desiring relief or exemption from any aspect or requirement of this article may request such relief from the Rome City Commission at a pre-application meeting with the Rome/Floyd Building Inspection Department; and
- (B) A request for variance shall be attached to the original application, or in the case of an existing or previously approved application a request for alteration of its proposed facilities; and
- (C) Applicant must agree to waive any applicable shot clock that might otherwise apply to the application; and
- (D) Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Rome City Commission; and
- (E) In exercising its discretion, the Rome City Commission may consider all factors consistent with applicable law, including but not limited to whether the denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. § 332(c)(7) as interpreted by precedent binding in the Eleventh Circuit Court of Appeals, or whether approval is otherwise required by operation of law.

- (F) The burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the City Commission by clear and convincing evidence.
- (G) The applicant shall bear all costs of the City Commission in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the facilities without the specific written permission of the City Commission.

**Section 10. Existing Master Right of Way Agreement for Mini Cell; Conflicts**

Sec. 10.1 Any Master Right of Way Agreement for Mini Cell executed by and between a small cell wireless provider and the City that is effective and not terminated prior to the effective date of this article, shall remain in effect until its expiration or earlier termination as provided therein, to the extent permissible by law.

AND BE IT FURTHER ORDAINED AND ENACTED that this Ordinance shall take effect five (5) days from the date of its enactment.

**SECTION II:**

**BE IT FURTHER ORDAINED** that all ordinances, or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

**ADOPTED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF ROME

By: \_\_\_\_\_  
Bill Collins, Mayor

(SEAL)

Attest: \_\_\_\_\_  
Joe Smith, Secretary  
Rome City Commission