

City of
Lynchburg
Virginia:

Small Cell
Facility
Permit
Application



2020

Sec. 35-24. - Unlawful to install and/or expand communications systems without a franchise.

The council of the city of Lynchburg has determined that it is in the best interests of the city and its citizens to regulate and grant franchises to entities desiring to construct, operate and maintain communications systems within the public streets, alleys, public grounds or other public rights-of-way.

No corporation, association, person, partnership, or any other entity, whether public or private, profit or not for profit, shall construct, operate, expand or maintain a public or private communication system, any type of transmitter/receiver system, any telecommunication system, or any other system of any nature whatsoever for the purpose of transmitting or receiving voice, data, video or image signals in any of the city's streets, alleys, public grounds or other public rights-of-way without first obtaining a franchise from the Lynchburg City Council.

No corporation, association, person, partnership, or any other entity, which currently has a franchise from the city to maintain electric, gas, light, power, telephone, cable television, or any other services in the city's streets, alleys, public grounds, or other public rights-of-way shall expand, sell, lease or transfer their equipment and facilities to include any of the activities listed above without first obtaining a modification of their existing franchise from the city specifically permitting such activities.

Any violation of this section shall be punishable as a class 1 misdemeanor and each day such violation continues shall be punishable as a separate offense. In addition to the other penalties provided herein the city shall have the right to petition the judge of the circuit court for a court order in joining any violation of this section.

(Ord. No. 0-95-132, 5-23-95)

Sec. 35-28. - Unlawful to install micro-wireless and small cell facilities in the public rights-of-way or on city-owned property without a permit.

The Council of the City of Lynchburg has determined that it is in the best interests of the city and its citizens to regulate the installation of micro-wireless and small cell facilities within the public streets, alleys, public grounds or other public rights-of-way or upon city-owned property.

Therefore, no corporation, association, person, partnership, or any other entity, whether public or private, profit or not for profit, shall install micro-wireless and small cell facilities within the public streets, alleys, public grounds or other public rights-of-way within the city or upon city-owned property without first obtaining a permit from the city. The requirement of a permit also applies to the co-location of micro-wireless and small cell facilities on existing structures that are located within the public streets, alleys, public grounds or other public rights-of-way or upon city-owned property.

Any violation of this section shall be punishable as a class 1 misdemeanor and each day such violation continues shall be punishable as a separate offense. In addition to the other

penalties provided herein, the city shall have the right to petition the judges of the circuit court for a court order enjoining any violation of this section.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.1. - Definitions.

As used in this ordinance, unless the context requires a different meaning, the following definitions shall apply:

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, the city, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

For the definition of other terms that are used in this ordinance, see Sections 15.2-2316.3 and 56-484.26 of the Code of Virginia, 1950, as amended.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.2. - Application and fees.

Any corporation, association, person, partnership, or any other entity desiring to install or co-locate micro-wireless or small cell facilities within the public streets, alleys, public grounds or other public rights-of-way or upon city-owned property shall make written application therefor with the city's engineering division on forms supplied by the division. The applicant shall pay a fee not to exceed \$150.00 for processing a permit application.

In addition to the \$150.00 processing fee, the applicant shall also pay zoning, subdivision, site plan, and comprehensive plan fees of general application, if any, on a wireless services provider or wireless infrastructure provider to attach or co-locate micro-wireless or small cell facilities on an existing structure in the right-of-way.

The engineering division may require a single use permit fee, as determined by the engineering division, if the installation, placement, maintenance, or replacement of micro-wireless facilities or small cell facilities (i) involves working within the highway travel lane or require closure of a highway travel lane; (ii) disturbs the pavement, shoulder, roadway, or ditch line; (iii) includes placement on limited access rights-of-way; or (iv) requires any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached. All work conducted within the public right-of-way shall be restored as outlined in the city's procedures manual for asphalt/concrete (street) repairs. A copy of the procedures manual for asphalt/concrete (street) repairs shall be kept in the office of the department of public works and shall be available for review upon request. It shall be the responsibility of any applicant for a permit to review the manual and become familiar with its requirements before beginning any excavation work within the public rights-of-way.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.3. - Processing of application.

Upon receipt of an application, and after review of the application by the city's technical review committee, the engineering division may issue a permit allowing the installation and operation of micro-wireless or small cell facilities on existing structures in the public rights-of-way, provided that the applicant (i) has permission from the owner of the structure to co-locate equipment on that structure and (ii) provides notice of the agreement and co-location to the engineering division. The engineering division shall approve or disapprove any such requested permit within 60 days of receipt of the complete application. Within ten days after receipt of an application and a valid electronic mail address for the applicant, the engineering division shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the engineering division in writing for a period not to exceed an additional 30 days.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.4. - Issuance of permit and indemnification.

If the engineering division approves the installation of micro-wireless or small cell facilities as stated in the application for a permit, it shall issue the permit. The acceptance of a permit shall require the recipient thereof and its successors in interest to indemnify, hold harmless, and defend the city, its employees and officials, from all claims, expenses and costs, including reasonable attorney's fees, for damages or injuries to any person or property of any nature whatsoever, arising out of the installation and operation of micro-wireless or small cell facilities for which the permit was granted.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.5. - Denial of application.

The engineering division may disapprove a proposed location or installation of micro-wireless or a small cell facility for the following reasons:

- (a) Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;
- (b) The public safety or other critical public service needs;
- (c) Only in the case of an installation on or in publicly owned or publicly controlled property, excluding privately owned structures where the applicant has an agreement for attachment to the structure, aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property; or
- (d) Conflict with the applicable provisions of the city's zoning ordinance regulating historic sites and structures.

An applicant may voluntarily submit conditions to address potential visual or aesthetic effects resulting from the placement of micro-wireless and small cell facilities.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.6. - Attachment on city-owned structures.

- (a) If the city agrees to permit a wireless services provider or a wireless infrastructure provider to attach micro-wireless or small cell facilities to city-owned structures, the city and the wireless services or wireless infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract terms and conditions.
- (b) The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based, nondiscriminatory, and competitively neutral, and shall comply with all

applicable state and federal laws. However, rates for attachments to city-owned buildings may be based on fair market value.

- (c) For utility poles owned by the city or the Commonwealth that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.
- (d) For utility poles owned by the city or the Commonwealth that do not support aerial cables used for video, communications, or electric service, the government entity owning or controlling the utility pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to support the requested co-location, including pole replacement, if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless infrastructure provider.
- (e) The government entity owning or controlling the utility pole shall not require more make-ready work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television and electric services for similar work and shall not include consultants' fees or expenses.
- (f) The annual recurring rate to co-locate a micro-wireless or a small cell facility on a government-owned utility pole shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the appropriateness of the rate, the government entity owning or controlling the utility pole shall have the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the utility pole for such period.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Sec. 35-28.7. - Relocation of facilities.

Whenever the city shall determine it is necessary in connection with the repair, relocation, or improvement of the public rights-of-way or any public project, the city may require by written notification that any corporation, association, person, partnership, or any other entity, which has installed micro-wireless or small cell facilities in the city's streets, alleys, or other public rights-of-way or on public grounds or on city-owned property to remove or relocate any facilities located in the public rights or way or on public grounds or on city-owned property. Within 60 days after receipt of notification, unless the city extends such period for good cause shown, such corporation, association, person, partnership, or other entity shall remove or relocate its facilities to such place and under such terms and conditions as specified by the city. Such corporation, association, person, partnership, or other entity shall bear all expenses associated with the removal and relocation of its facilities except that the city will issue, without charge whatever local permits are required for the relocation of such facilities. If such corporation, association, person, partnership, or any other entity does not complete its removal or relocation within 60 days or such other period as authorized by the city, the city may take such actions as necessary to effect such removal or relocation at such corporations, association's, person's, partnerships, or other entities' expense. If the city or its representatives remove or relocate any facilities that are located in the city's streets, alleys, or other public rights-of-way or on public grounds or on city-owned property because the owner of the facilities fails to do so in a timely manner, neither the city or its representatives shall be liable for any damages the facilities may suffer as a result of such removal or relocation. Further, any corporation, association, person, partnership, or any other entity that fails to remove its facilities in a timely manner will be responsible for any additional costs and expenses incurred by the city as a result of such corporations, associations, people, partnership's, or other entities' failure to remove or relocate its facilities as instructed by the city.

(Ord. No. [O-17-060](#), § 1, 7-27-17)

Companies desiring to install **Small Cell Facilities (“SCF”)** in the City of Lynchburg, Virginia must complete this permit application and receive approval from the City. An applicant must submit a completed permit application for each location it proposes to install such facilities within the City.

The applicant may install the permitted SCF in the City of Lynchburg only after receiving written approval of this permit application from the City. Once approved to applicant must comply with provisions of said permit. The permit is non-transferable. The applicant cannot transfer its rights under this permit to any other entity or individual, including subsidiaries.

In addition to the completed applicants must submit:

- ✓ Evidence of required insurance (See Exhibit A) or, Licensing or Franchise Agreement approved by the City of Lynchburg
- ✓ Image of the pole or structure to be attached to including the location of the said pole or structure

Name of Applicant: _____

Address: _____

Telephone Number: _____

Company Contact Person: **(if applicable)** _____

Telephone Number _____

Email Address: _____

Telephone Number: _____ Email Address: _____

Name of Person Submitting Application: _____

Relationship/Legal Authority to Business Entity: _____

Anticipated Start Date: _____

Is the pole or structure located in the Airport Overlay District? Yes _____ No _____
If yes, Engineering staff member who verified this information: _____

Is the pole or structure located in the Historical District? Yes _____ No _____
If yes, please contact Victoria Glasgow at 434-455-3937 to obtain approval and provide documentation of approval from the Historical Commission.

What is the cubic feet of the antenna and any exposed elements? _____ cu. ft.
Note: **each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet**

What is the cubic feet of all wireless equipment associated with the facility? _____ cu. ft.
Note: **all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission.**

What is the latitude and longitude of the pole or structure (make sure to use (NAD83 in decimal degrees)? Latitude _____ Longitude _____

I have read and understand the requirements of Small Cell Facility Program and recognize the City's right to prohibit any person or corporation from occupying or using city streets in a manner not permitted to the general public, without first having obtained permission from the City's governing body pursuant to, Va. Code € 15.2-2018. I acknowledge that my company is responsible for all liability contained within the scope of work. I certify that the information contained in this application and the attached documents is true and correct to the best of my knowledge, information and belief, and that I am authorized to make this application request.

By signing below, the permittee agrees to abide by the conditions pertaining to the specific type of use being permitted, which are set forth in the attached documents.

The undersigned hereby agrees to abide by all City regulations controlling permitted right-of-way, and further acknowledges that violation of permit conditions and City Code **Chapter 10 Article IV Sections 10-53 through Sec 10-56** will result in the revocation of this permit.

By signing this permit application, the applicant certifies that the information provided is correct and that he/she has the authority to sign for and bind their company.

Signature: _____ Date: _____

Printed Name and Title: _____

Questions should be directed to Numan Franklin at (434)455-3885 or numan.franklin@lynchburgva.gov