ORDINANCE # 19

City of Rushford Village Ordinance relating to regulation of small cell wireless telecommunication facilities within public right-of-way.

The City of Rushford Village does hereby ordain:

1. ENABLING AUTHORITY

In accordance with its authority to manage right-of-ways within its jurisdiction, the city hereby elects to regulate the installation, maintenance, and operation of small cell wireless facilities within its public rights-of-way.

2. PURPOSE

The city desires high quality wireless communication services to accommodate the needs of residents and businesses. The city also strives to minimize the negative impacts that wireless telecommunication facilities can have on aesthetics and public safety. The purpose of this subchapter is to regulate small cell wireless telecommunication facilities within the public rights-of-way in a manner that balances desire for service with aesthetic, public safety and right-of-way flexibility concerns.

3. INTENDED INTERPRETATION

This subchapter shall be interpreted consistent with Minn. Stat. § 237.162 and § 237.163 as amended, and other applicable laws governing the use of public right-of-ways. This subchapter does not alter or replace Rushford Village City Ordinance regarding Telecommunication Towers. To the extent any provisions of City of Rushford Village Ordinances are inconsistent with this subchapter or with Minn. Stat. § 237.162 or § 237.163, those inconsistent provisions shall not apply to installation or maintenance of small cell wireless support structures or facilities within the public right-of-way.

4. DEFINITIONS

As used in this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning, or to the extent context is inconsistent with Minn. Stat. § 237.162 or § 237.163 as amended:

CITY. Means the City of Rushford Village, Minnesota. Additionally, for purposes of Indemnification, city also means the city's elected officials, officers, employees, and agents.

APPLICANT. A person applying for a permit to install or maintain a small cell wireless facility within the public rights-of-way of the City of Rushford Village.

COLLOCATE. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by the city.

PERMIT. A permit issued by the city to an applicant authorizing it, with conditions, to install or maintain a small cell wireless facility within specifically designated public rights-

of-way of the city.

PERMITTEE. Any person to whom a permit has been granted by the city under this subchapter.

PERSON. An individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

RIGHTS-OF-WAY MANAGEMENT COSTS. The actual costs the city incurs in managing its public rights-of-way for the installation or maintenance of small cell wireless facilities, including costs associated with verification of rights-of-way involved in the applications, inspection of job sites and locations for the siting of small cell wireless facilities, processing permit applications and final issuance of the permits, maintaining, supporting, protecting, or moving user facilities during right-of-way work, as well as restoring work inadequately performed after providing notice and the opportunity to correct the work, and in revoking right of way or small cell wireless facility permits. Management costs do not include payment by a telecommunications right of way user for the use of the right of way, unreasonable fees of a third-party contractor used by the city including fees tied to or based on customer counts, access lines, or revenues generated by the right-of-way or for the city, the fees and costs of litigation relating to the interpretation of Minnesota Session Laws 1997, Chapter 123, Minn. Stat. § 237.162 or § 237.163 or any ordinance enacted under those sections, or the city fees and costs related to appeals taken pursuant to § 93.48 of this subchapter.

PUBLIC RIGHT-OF-WAY or RIGHT OF WAY. The area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city. A right of way does not include the airwaves above a right of way with regard to cellular or other non-wire telecommunications or broadcast service.

SMALL CELL WIRELESS FACILITY. "Small cell wireless facility" or "small wireless 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 could fit within such an enclosure; and

(ii) all other wireless equipment associated with the small wireless facility provided such equipment is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment.

TELECOMMUNICATIONS RIGHT-OF-WAY USERS. A person owning or controlling a facility in the right of way, or seeking to own or control a facility in the right of way which facility is used or is intended to be used for providing wireless service, or transporting telecommunication or other voice or data information. For purposes of this subchapter, the following are not telecommunications right-of-way users except, to the extent they are offering wireless services: a cable communication system defined and regulated under Minn. Stat. Ch. 238, and telecommunication activities related to providing natural gas or electric energy services, a public utility as defined in Minn. Stat. § 216B.02, a municipal gas or

power agency organized under Minn. Stat. Ch. 453 and/or Ch. 453A, or a cooperative electric association organized under Minn. Stat. Ch. 308A.

UTILITY POLE. A pole that is used in whole or in part to facilitate telecommunications or electric service.

WIRELESS FACILITY. Equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including equipment associated with wireless service such as a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and a small wireless facility. A wireless facility does not include wireless support structures, wireline backhaul facilities, or coaxial or fiber-optic cables between utility poles or wireless support structures not otherwise immediately adjacent to and directly associated with a specific antenna.

WIRELESS SERVICE. Any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including cable service under United States Code, title 47, section 522, clause (6).

WIRELESS SUPPORT STRUCTURE. A new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

WIRELINE BACKHAUL FACILITY. A facility used to transport communications data by wire from a wireless facility to a communications network.

5. REQUIRED PERMITS

Subd. 1. ***Right-of-Way Excavation and Obstruction Permits.*** Any excavation or obstruction of the public right-of-way that may occur as a result of the intended erection, installation or maintenance of a small cell wireless support structure or collocation of a small cell wireless facility requires an excavation permit and/or an obstruction permit in accordance with the substantive and procedural provisions of Rushford Village City Ordinances § 93.20 through § 93.41.

Subd. 2. ***Right-of-Way Small Cell Wireless Facility Permits.*** A small cell wireless facility permit is required for a telecommunications right-of-way user to erect, install, or maintain a small cell wireless support structure, to locate or collocate a small cell wireless facility, or to otherwise install a small cell wireless facility in the public right-or-way of the city. Once issued, such permit shall remain in effect for the length of time the facility is in use, unless revoked for breach of the terms of the permit, this subchapter, statutes, or for other lawful reason.

6. APPLICATION FOR SMALL CELL WIRELESS FACILITY PERMITS.

Subd. 1. ***Procedures and Requirements.*** Application for a small cell wireless facility permit is made to the city. The application will be considered complete only upon compliance with all of the following requirements:

(a) The applicant shall identify each existing wireless support structure on which it seeks to locate a small cell wireless facility and, if applicable, identify each new

wireless support structure to be erected for the purpose of installation, operation and maintenance of a small cell wireless facility. Identification includes submittal of scaled drawings showing the location and area of all existing and all proposed wireless support structures, as well as specifications for the small cell wireless facilities.

(b) When an applicant proposes to install a new wireless support structure in the public right-of-way, the city may impose separation requirements between such structure and any existing wireless support structure or other facilities in and around the right-of-way, as well as other reasonable requirements not inconsistent with Minn. Stat. § 237.162 or § 237.163.

(c) No wireless support structure erected within the public right-of-way after May 31, 2017 shall exceed 50 feet above ground level, unless the city agrees to a greater height, subject to local zoning regulations and separation requirements in relation to other wireless support structures.

(d) A wireless support structure erected within the public right-of-way before May 31, 2017, that exceeds 50 feet above ground level may be replaced at the height of the existing wireless support structure. The city may agree to a greater height, subject to local zoning regulations.

(e) When an applicant proposes to install a new wireless support structure in a public right-of-way that is in or contiguous to an area zoned single family residential, the city may require a conditional use permit in accordance with City of Rushford Village Ordinance §153.102.

(f) If neither the applicant nor the city will be the owner of the existing or to be erected wireless support structure, applicant must provide an executed facility agreement by which the owner of the structure grants applicant authority to utilize the support structure for locating or co-locating a small cell wireless facility. The agreement may contain other terms and conditions agreed to by the parties consistent with the terms and duration of the permit. If the city will be the owner of the wireless support structure, Subd. 3 hereafter of this section becomes the applicable provision.

(g) No wireless facility may extend more than 10 feet above its wireless support structure.

(h) Where an applicant proposes collocation on a decorative wireless support structure, sign, or other structure not intended to support small wireless facilities, or on a structure that has multiple uses including temporary or seasonal additional uses, the city may impose reasonable requirements to accommodate the particular design, appearance, intended purpose, or multiple uses of such structure.

(i) Applicant shall submit design drawings and information explaining how the small cell wireless facility and the wireless support structure shall blend into the surrounding environment to the maximum extent possible, with consideration given to the use of conforming building materials, color, texture, and screening. The facility and ground-mounted equipment shall minimize exposed cabling and mounting hardware, and shall match the structure it is attached to in color and, as close as practicable, in material and design.

(j) Applicant shall submit verification of insurance including occurrence form comprehensive liability coverage for personal injury, death, and property damage, naming the city as an additional insured. The liability coverage shall be in an amount and for a duration sufficient to protect the city and the public and to carry out the purposes and policies of this subchapter, as approved by the city. The city may also require applicant to post performance or payment bonds as may be appropriate. In addition, applicant shall provide verification of automobile liability coverage and workers' compensation coverage.

(k) The city may recover its rights-of-way management costs by imposing a fee for each right-of-way or small cell wireless facility permit, and, when appropriate, a fee applicable to a particular telecommunications right-of-way user when that user causes the city to incur costs as a result of actions or inactions of that user. These fees must comply with the provisions and limitations of Minn. Stat. § 237.163, Subd. 6 and Subd. 7.

Subd. 2. ***Consolidated Applications.*** An applicant may file a consolidated small wireless facility permit application addressing the proposed collocation of up to 15 small wireless facilities, or a greater number if agreed to by the city, provided that all small wireless facilities in the application:

(a) are located within a two-mile radius;
(b) consist of substantially similar equipment; and
(c) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, the city may approve some small wireless facilities and deny others, but may not use denial of one or more permits as a basis to deny all small wireless facilities in the application.

Subd. 3. ***Small Cell Wireless Facility Agreement.*** If a small cell wireless facility is to be located or collocated on a support structure owned or controlled by the city, or on any other city asset in the right-of-way, the applicant shall execute a small cell wireless facility collocation agreement with the city. The collocation agreement may require payment of the following:

(a) Up to $150 per year for rent to collocate on the city structure.
(b) $25 per year for maintenance associated with the collocation;
(c) A monthly fee for electrical service as follows:
    1. $73 per radio node less than or equal to 100 maximum watts;
    2. $182 per radio node over 100 maximum watts; or
    3. The actual costs of electricity, if the actual cost exceed the foregoing.

The collocation agreement shall be in addition to, and not in lieu of, the required small wireless facility permit, provided, however, that the applicant shall not be additionally required to obtain a license or franchise in order to collocate. Issuance of a small wireless facility permit does not supersede, alter or affect any then-existing agreement between the city and applicant, nor does it limit or impact the ability of the city to generally manage its public rights-of-way as provided under Minn. Stat. § 237.163 Subd. 2, or to recover its rights-of-way management costs as provided for herein.

Subd. 4. ***Additional Conditions.*** The city may impose additional reasonable conditions upon the issuance of the permit and/or the performance of the applicant thereunder, as appropriate to protect the health, safety, and welfare of the city, or when necessary to protect the right-of-way and its current use. In addition, a permittee shall comply with all requirements of local, state, and

federal laws, including but not limited to Minn. Stat. §§ 216D.01 - .09 (Gopher One Call Excavation Notice System) and Minn. R., Ch. 7560 (Pipeline Safety Excavation Notice).

Subd. 5. ***Action on Small Wireless Facility Permit Applications.*** The city shall either approve or deny a small wireless facility permit application within 90 days after filing of such application. The small wireless facility permit, and any associated building permit application, shall be deemed approved if the city fails to approve or deny the application within the review periods established in this section.

Subd. 6. ***Tolling of Deadline.*** The 90-day deadline for action on a small wireless facility permit application may be tolled if:

(a) The city receives applications from one or more applicants seeking approval of permits for more than 30 small wireless facilities within a seven-day period. In such case, the city may extend the deadline for all such applications by 30 days by informing the affected applicants in writing of such extension; or

(b) The applicant fails to submit all required documents or information and the city provides written notice of incompleteness to the applicant within 30 days of receipt the application. Upon submission of additional documents or information, the city shall have ten days to notify the applicant in writing of any still-missing information; or

(c) The city and applicant agree in writing to toll the review period.

7. DENIAL OR REVOCATION OF PERMIT

Subd. 1. ***Reasons for Denial.*** The city may deny a permit for failure to meet the requirements and conditions of this subchapter, or if the city determines that the denial is necessary to protect the health, safety, and welfare of the public, or when necessary to protect the right of way and its current use.

Subd. 2. ***Procedural Requirements.*** The denial or revocation of a permit must be made in writing and must document the basis for the denial. The city must notify the applicant or right-of-way user in writing within three business days of the decision to deny or revoke a permit. If an application is denied, the right-of-way user may address the reasons for denial identified by the city and resubmit its application. If the application is resubmitted within 30 days of receipt of the notice of denial, no additional application fee shall be imposed. The city must approve or deny the resubmitted application within 30 days after submission.

Subd. 3. ***Appeal.*** A right of way user that has been denied a permit or has had a permit revoked may have the denial, revocation, or fee imposition reviewed by the City Council upon written request served on the city within 30 days of the denial, revocation, or fee imposition. The City Council shall act on a timely written request at its next regularly scheduled meeting, provided the right of way user has submitted its appeal with sufficient time to include the appeal as a regular agenda item. A decision by the City Council affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

8. CONDITIONS APPLICABLE TO CONTINUING USE, MAINTENANCE, OPERATION, AND DISCONTINUANCE OF WIRELESS FACILITY

Subd. 1. ***Continuing Duty of Maintenance and Repair.*** Permittee is responsible for continued maintenance and repair of the small cell wireless facility for the full duration of its permit and as

long as the facility remains in the public right-of-way.

Subd. 2. ***Continuing Compliance with Aesthetic Requirements.*** The requirements imposed upon permittee by § 93.47 Subd. 1(i) shall continue to be met for the full duration of the permit and as long as the small cell wireless facility remains in the public right-of-way.

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Subd. 3. ***Continuing Verification of Insurance.*** Permittee must assure that all insurance requirements imposed upon it by § 93.47 Subd. 1(j) continue to be met for the full duration of its permit and as long as the small cell wireless facility remains in the public right-of-way, and annually shall provide to the city verification of this continuing insurance.

Subd. 4. ***Permit Fees.*** Permit fees shall be established in accordance with Minn. Stat. § 237.163.

Subd. 5. ***Reservation of Regulatory and Police Powers.*** Permittee's rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances as necessary to protect the health, safety, and welfare of the public.

Subd. 6. ***Discontinuance or Abandoned of Facilities.*** A permittee who has determined to discontinue all or a portion of its operations under this permit shall provide information satisfactory to the city establishing that permittee's obligations for its facilities in the right-of-way have been lawfully assumed by another permittee. Any permittee who has abandoned facilities in any right-of-way shall remove them from that right-of -way at its expense, and repair any resulting property damages.

Subd. 7. ***Indemnification and Liability.*** By accepting a permit under this subchapter the permittee and its assignees agree to defend, indemnify, and hold harmless the city and its elected officials, directors, officers, employees, agents, and representatives from and against any and all claims, demands, actions, losses, or judgments, including damages to city property, arising out of or relating to applicant's use of the right-of- way and/or its installation, operation, use, maintenance, repair, removal, or presence of applicant's facilities, structures or equipment, and including reasonable attorneys' fees and other costs and expenses. This indemnification provision does not replace but rather is supplemental to and is to be interpreted consistent with the provisions of Minn. Rule 7819.1250.

Adopted by the City Council of the City of Rushford Village, Minnesota, on 3-19-2019

Published in the Tri-County Record on _____

Gordon Johnson

Gordon Johnson, Mayor

Attest:

Mary Miner

Mary Miner, Clerk