

§ 160D-935. Collocation of small wireless facilities.

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(a1) A city may not charge a wireless provider who is taxed under G.S. 105-164.4(a)(4c) and submits an application under G.S. 160D-935(d) or G.S. 160D-936(j) either of the following:

- (1) A fee for the collocation of a small wireless facility or the installation, modification, or replacement of a utility pole or city utility pole in the city right-of-way, including, without limitation, a fee under subsections (e) and (f) of this section or a fee for a building permit, electrical permit, inspection, lane closure, or work permit of any kind.
- (2) Except for recurring charges assessed under G.S. 160D-937(a), (c), and (d), a recurring charge for the collocation of a small wireless facility in the city right-of-way or the installation, modification, or replacement of a utility pole or city utility pole in the city right-of-way, including, without limitation, a recurring charge under G.S. 160D-936(f).

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160D-936(b)(2) shall only be subject to administrative review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of city rights-of-way on property other than single-family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

- (1) A city may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contributions to the city such as the reservation of fiber, conduit, or pole space for the city.
- (2) The wireless provider shall complete an application as specified in form and content by the city. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.
- (3) A permit application shall be deemed complete unless the city provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed-upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- (4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the city and the applicant.
- (5) A city may deny an application only on the basis that it does not meet any of the following: (i) the city's applicable codes, (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment, (iii) public safety and reasonable spacing

requirements concerning the location of ground-mounted equipment in a right-of-way, or (iv) the historic preservation requirements in G.S. 160D-936(i). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

- (6) An application shall include an attestation that the small wireless facilities must be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities must be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- (7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. A city may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The city may issue a separate permit for each collocation that is approved.
- (8) The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) A city may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities, (ii) the amount charged by the city for permitting of any similar activity, or (iii) one hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(f) A city may impose a technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. A city may engage an outside consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

- (1) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.
- (2) Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the city may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city shall not require an application or permit or charge fees for (i) routine maintenance, (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller, or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2021-180, s. 38.10(m).)