TO: Code amendment recipients

FROM: Jessica Guinn, Director

DATE: September 17, 2019

RE: Revised draft code amendments – 2019 draft amendment Package I, Version III

Attached please find the revised draft amendments to the Cobb County Code for the August/September 2019 code amendment cycle, known as amendment Package I, Version III. This package has been revised to reflect necessary changes to insure consistency with State law, provide for the delegation of authority to the Director of the Department of Transportation to make determination regarding variances, and other general formatting and clean-up items. The modifications from the previous draft are summarized as follows:

1. Modified preferred installation sites in sec. 180
2. Modified some definitions to mirror the state law
3. Clarified due date for initial year right-of-way occupancy rates
4. Modified undergrounding provisions in sec. 184
5. Delegated authority to DOT Director to determine variances
6. Modified provision for costs of variance
7. Other general formatting and clean up

The amendments contained in the revised draft amendments to the Cobb County Code for the August/September 2019 code amendment cycle, known as amendment package I, version III will be considered by the Board of Commissioners on Tuesday, September 24, 2019, 2019 at 7:00 pm. The agenda item will be considered in the Board of Commissioners Meeting Room on the 2nd Floor of 100 Cherokee Street, Marietta, GA 30060.

Hard copies of this memorandum and the revised draft amendments to the Cobb County Code for the August/September 2019 code amendment cycle, known as amendment Package I, Version III, will be provided to the Board of Commissioners, County Manager, County Clerk, and the Clerk of the Superior Court.

Thank you.

2019 CODE AMENDMENTS

Official Code of Cobb County
Part I. – Chapter 106

Package I
Version III - distributed on September 18, 2019

Board of Commissioners Public Hearing Dates
August 27, 2019 – 7:00 pm
September 24, 2019 – 7:00 pm

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Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Sec. 106-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the county board of commissioners.

Canopy lighting means top mounted lighting fixtures affixed to a canopy, ceiling or overhead structural element to illuminate an expansive area.

Community improvement district means any one of several districts in the county, being bodies corporate and politic, and created and activated pursuant to the Constitution and laws of this state as more particularly described in article II of chapter 6 of part II (state enabling legislation) of this Code.

Department means the Cobb County Department of Transportation.

Director means the director of the department of transportation or his or her duly appointed or assigned authorized representative.

LED strip lighting means a ribbon or narrow segment of flexible circuit board with surface mounted light emitting diodes affixed to a structural element and used typically for accent lighting or decorative lighting applications.

Lot means, except as otherwise defined herein, any single tract of land which falls within any of the zoning classifications, as defined by the zoning regulations set forth in chapter 134; provided, however, that in areas zoned for purposes other than single-family residential, different criteria may be adopted by the board of commissioners for the payment of energy costs and retirement of construction costs.

~~*Small cell communications equipment ("mini cells")* means wireless communications equipment and devices installed on or attached to street light fixtures by wireless communications companies, operators and providers to extend service coverage and increase network capacity.~~

Street light means: (1) a fixture situated within the street or roadway right-of-way and comprising part of roadway infrastructure; and (2) composed of a footing, pole shaft, attached arm and/or luminaire mounted a minimum of 25 feet above the ground; and (3) operated for street or roadway illumination with the attached arm being of sufficient length to provide such illumination of the adjacent street or roadway; provided that in community improvement districts other and various types of lighting fixtures or devices mounted on or affixed to a bridge to illuminate the bridge surface, bridge structure, bridge supports or bridge design elements shall also be considered street lighting for purposes of this article II and shall include but not be limited to LED strip lighting, canopy lighting, architectural or decorative lighting elements or other similar types of lighting.

Street light district program means the county's overall program related to implementing, operating, and managing this article and any related policies and procedures.

(Ord. of 2-27-79, § 4; Ord. of 6-10-86, § 2; Code 1977, § 3-23-27; Ord. of 7-27-95; Amd. of 3-22-11; Amd. of 10-24-17)

Cross reference— Definitions generally, § 1-2.

~~Sec. 106-82. – Small cell communications equipment; attachment.~~

~~(a) Any company, partnership, association, corporate entity or individual ("cell company") seeking to attach small cell communications equipment (mini cells) to county owned street lights shall have first executed a "Master Right of Way Agreement for Mini Cell" ("agreement") with the county and shall, in accordance with the provisions of such agreement, conform and adhere to all procedures and permitting requirements enumerated therein for any proposed attachment.~~

~~(b) Aesthetic considerations will, in part and as articulated in the preamble of the agreement, inform the county's decision as to any permit requested by a cell company for attachment to county owned decorative or architectural lighting situated within the corporate limits of any community improvement district in the county. The county's decision will also include a consideration of the financial investment in such decorative infrastructure and the extent to which the proposed mini cell equipment will detract from the appearance of the decorative lighting and/or diminish the value of the financial investment therein.~~

(Amd. of 10-24-17)

Sec. 106-156. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the county board of commissioners.

Bollard lighting means a type of architectural outdoor lighting fixture comprised of short, upright ground or base mounted units, typically giving off light from the top or the sides, used to illuminate sidewalks, walkways or steps.

Community improvement district means any one of several districts in the county, being bodies corporate and politic, and created and activated pursuant to the Constitution and laws of this state as more particularly described in article II of chapter 6 of part II (state enabling legislation) of this Code.

Department means the Cobb County Department of Transportation.

Director means the director of the department of transportation or his duly appointed or assigned authorized representative.

Lot means any single tract of land which falls within any of the zoning classifications as defined by the zoning regulations set forth in chapter 134.

Pedestrian light means: (1) a pedestrian-scale fixture situated within or adjacent to sidewalks, trails and/or pathways; (2) composed of a footing, pole shaft and luminaire, which may or may not be attached to an arm extending from the pole; (3) mounted a minimum of 15 feet above the ground; and (4) operated for pedestrian safety and for sidewalk, trail or pathway illumination; provided that in community improvement districts other and various types of pedestrian lighting fixtures or devices mounted on or affixed to a bridge for pedestrian safety and for the illumination of the bridge surface, sidewalk, walkways or steps shall also be considered pedestrian lighting for purposes of this article V and shall include but not be limited to hand rail lighting, bollard lighting, low mounted step lighting or other similar types of lighting.

Pedestrian lighting district means a district created by the board of commissioners either upon petition or of their own initiative for the purpose of providing illumination along sidewalks, or trails, or other pathways designed for pedestrian traffic and located within county rights-of-way.

~~*Small cell communications equipment ("mini cells")* means wireless communications equipment and devices installed on or attached to pedestrian light fixtures by wireless communications companies, operators and providers to extend service coverage and increase network capacity.~~

(Ord. of 7-24-07; Amd. of 10-24-17)

~~Sec. 106-168.1. – Small cell communications equipment; attachment.~~

~~(a) Any company, partnership, association, corporate entity or individual ("cell company") seeking to attach small cell communications equipment (mini cells) to county owned pedestrian lights shall have first executed a "Master Right of Way Agreement for Mini Cell" ("agreement") with the county and shall, in accordance with the provisions of such agreement, conform and adhere to all procedures and permitting requirements enumerated therein for any proposed attachment.~~

~~(b) Aesthetic considerations will, in part and as articulated in the preamble of the agreement, inform the county's decision as to any permit requested by a cell company for attachment to county owned decorative or architectural lighting situated within the corporate limits of any community improvement district in the county. The county's decision will also include a consideration of the financial investment in such decorative infrastructure and the extent to which the proposed mini cell equipment both will detract from the appearance of the decorative lighting and also will diminish the value of the financial investment therein.~~

(Amd. of 10-24-17)

Editor's note— Amd. of 10-24-17 set out provisions adding Div. 3, § 106-169. To preserve the existing § 106-169, and at the editor's discretion, said provisions have been included herein as Div. 3, § 106-168.1.

Chapter 106 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES Article VII – Small Wireless Facilities

Section 106-180 – Purpose and Scope

(A) Purpose. The purpose of this article is to establish policies and procedures for the placement of small wireless facilities in rights-of-way under the County's jurisdiction, consistent with the preservation of the integrity, safe usage, and visual qualities of the County rights-of-way and the County as a whole.

(B) Intent. In enacting this article, the County is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

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

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

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

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

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

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

It is not the intent of this section to prohibit or have the effect of prohibiting the provision of personal wireless services in the County; 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 County is required to approve pursuant to federal and state law; or require the location or siting of wireless telecommunications facilities on County-owned public property.

(C) Preferred Installation Sites. It shall be the policy of the County to discourage the installation of new poles and above-ground cabinets in the County'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:

(1) Collocated with existing small wireless facilities on or off the rights-of-way;

(2) On existing poles located within the rights-of-way;

(3) On replacement poles installed in the rights-of-way; or

(4) On new poles placed in the rights-of-way.

(D) Relationship to Other Laws. In the event of a conflict between this article and the remainder of the Official Code of Cobb County, Georgia, this article shall control as applied to small cell wireless facilities, only. Otherwise, this article shall supplement and be read in conjunction with the terms of the County Code.

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 106-181 - Definitions

(A) *Antenna* has the same meaning as in O.C.G.A. § 36-66C-2(2).

(B) *Applicable codes* means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the state or an authority or are otherwise applicable in the jurisdiction in which the application is submitted.

(C) *Applicable Laws* means and includes any and all federal, state, or local laws, statutes, common laws, applicable codes, rules, regulations, orders, or ordinances and the Telecommunications Act of 1996 as codified in 47 U.S.C. § 151 *et seq*.

(D) *Applicant* means any person who submits an application.

(E) *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.

(F) *Article* means Article VII of Chapter 106 of the Official Code of Cobb County, Georgia (hereinafter "County Code").

(G) *Chapter* means Chapter 106 of the County Code of Cobb County.

(H) *County-Owned Pole* means a pole owned, managed, or operated by or on behalf of the County. Such term shall not include poles, support structures, electric transmission structures, or equipment of any typed owned by an electric supplier. The term shall only include vertical portions of covered poles; horizontal extensions are not included.

(I) *Collocate* has the same meaning as in O.C.G.A. § 36-66C-2(11).

(J) *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.

(K) *Day* means calendar day.

(L) *Fee* means a one-time charge.

(M) *Historic district* has the same meaning as in O.C.G.A. § 36-66C-2(20).

(N) *Micro wireless facility* has the same meaning as in O.C.G.A. § 36-66C-2(23).

(O) *O.C.G.A.* means the Official Code of Georgia Annotated.

(P) *Permit* has the same meaning as in O.C.G.A. § 36-66C-2(24).

(Q) *Person* means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the County.

(R) *Pole* has the same meaning as in O.C.G.A. § 36-66C-2(26).

(S) *Rate* means a recurring charge.

(T) *Rights-of-Way* or *ROW* has the same meaning as in O.C.G.A. § 36-66C-2(31).

(U) *Small Wireless Facility* has the same meaning as in O.C.G.A. § 36-66C-2(32).

(V) *Support Structure* has the same meaning as in O.C.G.A. § 36-66C-2(34).

(W) *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 County-owned poles. Such term shall not include structures or poles supporting only wireless facilities on the date of the application.

(X) *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.

(Y) *Wireless Infrastructure Provider* has the same meaning as in O.C.G.A. § 36-66C-2(35).

(Z) *Wireless Provider* has the same meaning as in O.C.G.A. § 36-66C-2(36).

(AA) *Wireless Services* has the same meaning as in O.C.G.A. § 36-66C-2(37).

(BB) *Wireless Services Provider* has the same meaning as in O.C.G.A. § 36-66C-2(38).

Section 106-182 – Permitted Use; Application and Fees

(A) 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.

(B) 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.

(C) Permit Application. All small wireless facility permit applications filed pursuant to this article shall be filed via the County's electronic permitting system. 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. As part of any pre-application meeting required by Section 36-66C-3(a), applicants must complete training provided by County staff intended to familiarize applicants with the County's online system, and reduce the likelihood of incomplete or incorrect application submissions.

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 by following the procedures set forth in paragraph (34) of subsection (a) of Code Section50-18-72. 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.

The County 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.

(D) 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 O.C.G.A. § 36-66C-6(d).

(E) 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 County of activities taking place within the rights-of-way without a permit, wireless providers shall provide such notice to the County 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 County in Section 106-3(a) of this Code.

(F) Information Updates. Any amendment to information contained in a permit application shall be submitted in writing to the County 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 County; or thirty (30) days.

(G) 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.

(H) Fees. Fees for applications shall be assessed as required by applicable law. In the event the County'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 County to ensure they reasonably approximate the County's costs in processing and reviewing applications.

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

(I) ROW Occupancy Rates; Attachment Rates for Collocations on County-owned Poles. Rates to occupy the County 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 for annual rates for the initial year shall be due at the time of issuance of the permit. 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 County reserves the right to increase fees upon notice, to the extent permissible by law.

(J) Fees for Make-Ready Work. For any collocations on County-owned poles in the rights-of-way, applicants and County shall conform to the procedures and requirements set

forth in O.C.G.A. § 36-66C-7(n). The County reserves the right to increase fees upon notice, to the extent permissible by law.

Section 106-183 – Action on Permit Applications

(A) Review of Small Wireless Facility Applications. The County, 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.

(B) Review of Eligible Facilities Requests. Notwithstanding any other provision of this article, the County, 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 County. 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 106-184 - Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

(A) 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).

(1) 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.

(B) 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.

(C) Undergrounding Provisions. Absent the County's grant of a variance in accordance with section 188 of this article, applicant shall comply with the nondiscriminatory undergrounding requirements set forth in O.C.G.A. § 36-66C-7(i).

Section 106-185 – Effect of Permit

(A) Authority Granted; No Property Right or Other Interest Created. A permit from the County 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.

(B) Duration. Collocation, installation, modification, or replacement for which a permit is issued under this article shall be completed within six months after the date of 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).

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

Section 106-186 – Removal, Relocation or Modification of Small Wireless Facilities in the ROW

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

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

(C) Reconditioning Work. Reconditioning Work shall be governed by O.C.G.A. § 36-66C-7(m).

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

(E) Emergency Removal or Relocation of Facilities. If the County determines that a wireless provider's activity in a right-of-way creates an imminent risk to public safety, the County 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 County 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 County retains the right and privilege to cut power to or move any small wireless facility located within the rights-of-way of the County, as the County 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.

(F) Damages to Rights-of-Way. The County 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 106-187 – Development Standards

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 decorative pole, except as provided by O.C.G.A. § 36-66C-12.

(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 shall adhere to the County's reasonable and nondiscriminatory undergrounding requirements in accordance with O.C.G.A. § 36-66C-7(i).

(D) Wireless providers may not place new poles or replace a decorative pole unless it has complied with the certification requirements set forth in O.C.G.A. § 36-66C-6(k).

(E) Monopoles. Every new utility pole or wireless support structure shall be a monopole rather than a lattice tower or guy-wire support tower, unless otherwise authorized.

(F) 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.

(G) 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.

(H) 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.

(I) 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.

(J) 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.

(K) Lighting. Signal lights or illumination shall be prohibited unless required by the FCC or the Federal Aviation Administration.

(L) 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 County.

(M) Power Supply. Any facility occupying a County-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 County-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 County.

Section 106-188 – Variance Process

(A) Upon good cause shown, the Board 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 Director Board at a pre-application meeting;
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;
c) In the event applicant submits an application for a variance, or any appeal of a departmental decision, applicant shall agree to toll the shot clock or application

processing deadlines found in Federal, State, or local law for a reasonable amount of time for the County to act upon any such request;

d) Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Director;

e) In exercising its discretion, the Director 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 Director by clear and convincing evidence. The decision of the Director shall be final;

g) Upon recommendation of the Director, the Board reserves the right to assess applicant reasonable costs associated with consideration of the request.

Section 106-189 – Existing Master Right of Way Agreement for Mini Cell; Conflicts

Any Master Right of Way Agreement for Mini Cell executed by and between a small cell wireless provider and the County 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.

Section 106-190 – Effective Date

This article shall have an effective date of October 1, 2019.