

**ORDINANCE NO. 4395**

**AN ORDINANCE ADDING NEW CHAPTER 16.1 TO TITLE 4  
OF THE EAST PEORIA CITY CODE REGARDING THE REGULATION OF  
SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, the City of East Peoria (the “City”) is an Illinois municipal corporation in accordance with the Constitution of the State of Illinois of 1970; and

**WHEREAS**, the City is authorized under the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) and Illinois law to adopt ordinances pertaining to the public health, safety and welfare; and

**WHEREAS**, the City is authorized to adopt the amendments contained herein pursuant to its authority to regulate the public right-of-way under Division 80 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-80-1 *et seq.*); and

**WHEREAS**, the Illinois General Assembly has recently enacted Public Act 100-585 creating the Small Wireless Facilities Deployment Act (the “Act”), which became effective June 1, 2018; and

**WHEREAS**, the Act allows the City to regulate small wireless facilities and accessories in municipal rights-of-way; and

**WHEREAS**, the City uses the public rights-of-way within its City limits to provide essential public services to its residents and businesses; and

**WHEREAS**, the public rights-of-way within the City are a limited public resource held by the City for the benefit of its citizens, and the City has a duty to ensure that the public rights-of-way are used, repaired, and maintained in a manner that best serves the public interest; and

**WHEREAS**, the City desires to regulate the siting, design, and construction of small wireless facilities and accessories throughout the City; and

**WHEREAS**, the City seeks to minimize the impact of small wireless facilities and accessories on the City and its residents by establishing standards for location, design, landscape screening, and compatibility throughout the City; and

**WHEREAS**, growing demand for personal wireless telecommunications services has resulted in increasing requests locally from the wireless industry to place small wireless facilities and equipment on utility poles, street light poles, and other structures that are in the public rights-of-way throughout the City; and

**WHEREAS**, the City Council of the City of East Peoria finds that it is in the best interests of the City and its residents to adopt the regulations, procedures, and requirements for small wireless facilities contained herein;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** Title 4 of the City Code of the City of East Peoria is hereby amended with the addition of new Chapter 16.1 as follows:

## **CHAPTER 16.1 – SMALL WIRELESS FACILITIES IN PUBLIC RIGHT-OF-WAY**

### **4-16.1-1 Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

*Act*, as used in this chapter of the City Code, means the Small Wireless Facilities Deployment Act established by Public Act 100-585, as amended from time to time.

*Camouflaged*. Using shape, color, and texture to cause an object to appear to become part of something else. Camouflage does not mean invisible, but rather appearing as part of the landscape or another structure. Includes wireless telecommunication facilities disguised to appear as another structure such as a flag pole, light pole, sign, tree, or utility pole.

*Collocation*. The sharing of structures by wireless service providers and other right-of-way users on a single support structure or otherwise sharing a common location.

*Small wireless facility*. A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 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 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

*Utility pole*. A pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

*Wireless facility.* 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. "Wireless facility" includes small wireless facilities. "Wireless facility" does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

*Wireless infrastructure provider.* Any person authorized to provide telecommunications service in the State of Illinois that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or contractor for a wireless services provider for the application submitted to the City.

*Wireless provider.* A wireless infrastructure provider or a wireless services provider.

*Wireless services.* Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

*Wireless services provider.* A person who provides wireless services.

*Wireless support structure.* A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include a utility pole.

#### **4-16.1-2. Standards and Regulations.**

- (a) As required by the Act, small wireless facilities will be permitted to be placed in rights-of-way within the jurisdictional limits of the City as attachments to existing utility poles, alternative antenna structures, or City-owned infrastructure, or as installations on new wireless support structure subject to the following regulations:
  - (1) The small wireless facility does not interfere with the frequencies used by a public safety agency for public safety communications;

- (2) The wireless provider does not install small wireless facilities of the type and frequency that will cause unacceptable interference with a public safety agency's communications equipment (as determined by FCC's regulations);
- (3) The wireless provider complies with the requirements that are imposed by any contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way;
- (4) The wireless provider complies with applicable regulations concerning the location of ground-mounted equipment located in the right-of-way;
- (5) The wireless provider complies with all other aspects of the City Code including, but not limited to, all applicable rules and plans related to special districts or overlay areas concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval;
- (6) The wireless provider complies with the generally applicable standards of the Act adopted by the City for construction and public safety in the rights-of-way, including but not limited to reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations;
- (7) The wireless provider must comply with the City regulations regarding public safety;
- (8) The wireless provider must comply with the City's written design standards that are applicable to decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements including but not limited to standards set forth for the Downtown Overlay District, the Four Corners Overlay District, and all historic districts within the City. The wireless services provider must also comply with the location, design, theme and aesthetic requirements for the Downtown Overlay District and the Four Corners Overlay District as set forth in the Plan for the East Peoria Downtown Overlay District and Plan for the East Peoria Four Corners Overlay District documents;

- (9) If the small wireless facility is proposed to be installed on a new pole, the City may propose that the small wireless facility be collocated on an existing utility pole or wireless support structure within 100 feet of the proposed collocation. The wireless facility provider must accept the proposed collocation if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location and structure do not impose technical limits or additional material costs as determined by the provider. The City may require the wireless provider to provide a written certification describing the property rights, technical limits or material cost reasons that alternate location does not satisfy the criteria;
- (10) The wireless provider must comply with the provisions of this Chapter when placing a small wireless facility in a subdivision developed after June 1, 2018, including but not limited to location, design and aesthetic requirements including camouflaging to blend with the area where the small wireless facility is proposed to be located and undergrounding requirements. The wireless provider must also comply with all requirements of paragraph of this section regarding residential areas;
- (11) The wireless provider must comply with all Illinois Department of Transportation regulations regarding location and space from roads governed by the Department of Transportation;
- (12) The wireless provider may not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole; however, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole (the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers);

- (13) The wireless provider must comply with all applicable codes and City code provisions and regulations that concern public safety;
  - (14) When placing a small wireless facility or accessory in a residential area, the wireless provider must comply with the aesthetic requirements of any restrictive covenants of the residential area, if any such covenants exist;
  - (15) Neither small wireless facilities nor accessories may be placed in front of a residence. The “front” of a residence shall be determined to be the street frontage of the width of the front of the residential structure;
  - (16) All small wireless facilities and accessories in a residential area must be screened and camouflaged. All screening shall be approved by the City pursuant to this chapter. Additionally, the design of any newly erected poles shall be approved by the City pursuant to this chapter;
  - (17) If screening is required, the screening must be of natural landscaping material or a fence, subject to the approval of the city and must comply with all City Code regulations pursuant to this chapter. Landscaping and fencing must conform to the surrounding area and shall meet the camouflaging requirements. Camouflaged poles shall be of a type and style approved by the City pursuant to this chapter; and
  - (18) No small wireless facility or accessory shall obstruct or interfere with pedestrian traffic on sidewalks or driveway visibility. In no instance shall a small wireless facility or accessory interfere with the visibility of motorists.
- (b) Attachment limitations. The maximum height of a small wireless facility is 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated. Subject to any waiver expressly granted by the City, the height of new or replacement utility poles or wireless support structures on which small wireless facilities are collocated is the higher of: (i) 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting

right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or (ii) 45 feet above ground level.

- (c) Applicability. This chapter shall not apply to the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not otherwise owned or controlled by the City, other than to comply with applicable codes and code provisions concerning public safety.
- (d) Design, Camouflaging, and Screening Approval. The approval of all design, camouflaging, or screening shall be submitted to the City's Director of Planning and Community Development for approval. If denied, the Director of Planning and Community Development must notify the applicant in writing of the denial. The applicant may appeal the denial to the Zoning Board of Appeals within fifteen (15) days of the notice of the denial. The Zoning Board of Appeals' decision on the design, camouflaging, or screening is final.

#### **4-16.1-3. Right-of-way permit and registration.**

A wireless provider that intends to use the right-of-way for a small wireless facility or equipment is required to apply for and obtain a permit and pay the required fee.

- (a) Registration. Each person who occupies or uses, or seeks to occupy or use, the right-of-way or place any small wireless facility or equipment in or on the right-of-way, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the City. Registration will consist of providing information as specified in the permit application.
- (b) Registration Prior to Work. No person may construct, install, repair, remove, relocate, or perform any other work on any small wireless facility or equipment, in any right-of-way without first being registered with the City.

#### **4-16.1-4. Application.**

- (a) Information Required. A wireless services provider is required to submit an application for a permit to use the rights-of-way for location of a small wireless facility in the form required by the City:

- (1) The application must include the name, address, contact person, phone number and after-hours emergency contact person and number for each applicant.
- (2) The application must include a brief description of the proposed location of the small wireless facility and accessories that are the subject of the application; the nature and purpose of the small wireless facility or accessories; and a description of the existing utilities in the vicinity of the proposed small wireless facility or accessory.
- (3) If the wireless services provider is seeking to collocate small wireless facilities on a utility pole or wireless support structure, the provider must also provide the following information:
  - a. Site specific structural integrity and, for a City utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
  - b. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed;
  - c. Specifications and drawings (including technical drawings and elevations) prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
  - d. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
  - e. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved;



- f. Certification that the collocation complies with paragraph d(6) of Section 15 of the Act to the best of the applicant's knowledge;
  - g. Proposed traffic control methods to be used during construction and maintenance; and
  - h. Proof of insurance as required by Section 7 of this Chapter.
- (b) An applicant, seeking to collocate small wireless facilities within the sole jurisdiction of the City, may file a consolidated application and receive one (1) permit for the collocation of up to twenty-five (25) small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. The City may issue separate permits for each collocation that is approved in a consolidated application.
- (c) Application Process. Within thirty (30) days after receiving the application, the City shall determine whether the application is complete and notify the applicant of its determination. If the application is not complete, the City shall specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within 30 days after when all documents, information, and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City. Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.
  - (1) The application to collocate a small wireless facility on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 90 days; however, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant must notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application; the permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice from the City; the receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Chapter or the Act; and

- (2) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within 120 days; however, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant must notify the City in writing of its intention to invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application; the permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice from the City; the receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Chapter or the Act.
- (d) Application Approval. The City shall approve an application unless the application does not meet the requirements of this code or the Small Wireless Facilities Deployment Act. If denied, the City shall document the basis for the denial, including the specific code provisions or application conditions on which the denial is based. The documentation shall be sent to the applicant prior to the denial of the application. The applicant may cure the deficiencies identified by the City and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved; however, the applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the resubmitted application. Any subsequent review shall be limited to the deficiencies cited in the denial. However, this revised application cure does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.
- (e) Tolling of Time Periods. The time period for applications may be further tolled by:
  - (1) The express agreement in writing by both the applicant and the City; or
  - (2) A local, state, or federal disaster declaration or similar emergency that causes the delay.

- (f) Time to Complete Work. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a City utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.
- (g) Duration of Permit. A permit shall be valid for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable codes, City code provisions, or provisions of the Act. Renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.
- (h) Submission of Application. Applications for permits and all supporting documentation under this section shall be submitted by personal delivery to the City of East Peoria, Department of Public Works, 2232 East Washington Street, East Peoria, IL 61611.
- (i) Application Fees. The application fee to collocate a single small wireless facility on an existing utility pole or wireless support structure is \$650 and \$350 for each small wireless facility addressed in an application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

The application fee for each small wireless facility addressed in an application that includes the installation of a new wireless support structure for such location is \$1,000.00.

An application will be considered incomplete if the appropriate fee is not submitted with the application.

The above fees are not applicable if a service provider has previously been authorized to occupy the rights-of-way for (i) routine maintenance; (ii) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller, if the wireless provider notifies the City at least ten (10) days prior to the planned replacement and includes equipment specifications (including, but not limited to the equipment type and

model numbers for the antennas and all other wireless equipment association with the small wireless facility) for the replacement of equipment consistent with the requirements of this code and the Act; or (iii) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes. However, a permit is required to work within rights-of-way for activities that affect traffic patterns or require lane closures.

#### **4-16.1-5 Annual Recurring Rates.**

The wireless services provider who collocates a small wireless facility on a city utility pole located in the right-of-way shall pay an annual recurring rate to the City in the amount of \$200 per year.

#### **4-16.1-6 Abandonment and Removal.**

A small wireless facility is considered “abandoned” if it is not used for a continuous period of twelve (12) months. The owner of an abandoned small wireless facility shall remove the facility within ninety (90) days after receipt of written notice from the City notifying the owner of the abandonment. If such small wireless facility is not removed within ninety (90) days of such notice, the City may remove or cause to be removed the abandoned facility pursuant to the pole attachment agreement, through an action for the abatement of nuisances, or by other law for removal and cost recovery. The City may remove any Small wireless facility deemed abandoned herein after 90 days prior notice to the owner. The owner of the abandoned small wireless facility will be liable to the City for reimbursement of any such removal or disposal costs.

#### **4-16.1-7 Sale or Transfer of Small Wireless Facility.**

Should an owner of a small wireless facility sell or transfer the ownership of such facility, said owner shall notify the City within thirty (30) days of such sale or transfer of the new owner’s name and contact information.

#### **4-16.1-8 Insurance and Bonds.**

The wireless provider must carry, at its own cost and expense, (i) property insurance for its property’s replacement cost against all risks; (ii) workers’ compensation insurance as required by Illinois law; (iii) commercial general liability insurance with respect to its activities on the City’s rights-of-way or improvements, including coverage for bodily injury and property damage in compliance with the provisions and coverage amounts set forth in Section 1-8-4.13(a) through 1-8-4.13 (c) of the City Code, as amended from time to time. The wireless provider must include the City as an additional insured on the

commercial general liability policy and provide certification and documentation of this inclusion at the time of the wireless provider's application for a permit.

If the wireless provider demonstrates the financial ability to self-insure, the wireless provider may self-insure all or a portion of the insurance coverage requirements set forth in this section. A wireless provider that self-insures the full amount of the commercial general liability coverage requirement set forth herein shall not be required to name the City as an additional insured. As used in this Section, "financial ability to self-insure" shall mean having and maintaining net unrestricted assets of at least one hundred million dollars (\$100,000,000.00), as determined in accordance with generally accepted accounting methods consistently applied, while maintaining appropriate loss reserves for the amount of self-insurance obligations established in this Section and otherwise which are actuarially derived in accordance with accepted standards of insurance industry and accrued or otherwise funded.

The wireless provider must also file with the City Clerk a certificate of bond in the penal sum of twenty thousand dollars (\$20,000.00) with sureties to be approved by the commissioner of accounts and finances, conditioned that the wireless provider, his successors, grantees, assignees or lessees will pay any and all rentals provided for by this section, or which may hereafter be assessed by the City Council, for the use of any public space so occupied, and to indemnify, keep and save the City, its officers and agents free and harmless and to reimburse it or them on account of any and all damages of any kind or character arising from the construction, maintenance or operation of such pole or accessory, and to further indemnify and reimburse all persons damaged or injured by reason of the acts of the wireless provider, his successors, grantees, assigns and lessees in the exercise of the rights and privileges granted under this section. Said bond shall be released when the applicable project is completed.

#### **4-16.1-9 Existing Agreements.**

A wireless provider that has an existing agreement with the City on June 1, 2018, for the collocation of small wireless facilities or installation of new utility poles for the collocation of small wireless facilities, must comply with the rates, fees, and terms of that agreement until May 31, 2020. After May 31, 2020, should the said wireless provider choose to accept the rates that are applicable in this Chapter, the wireless provider must notify the City in writing that the wireless provider opts to accept rates, fees, and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the small wireless provider has collocated on the City's utility poles pursuant to applications submitted to the City before the wireless provider provides such notice to exercises its option to accept the rates, fees, and terms of this Chapter.

**4-16.1-10 Severability.**

If any provisions of this chapter of the City Code or the application thereof are held to be invalid or unconstitutional by a court of competent jurisdiction, such ruling shall not affect any other provisions of this chapter not specifically included in such ruling or which can be given effect without the invalid or unconstitutional provision or application; and to this end, the provisions of this chapter of the City Code are declared severable.

**Section 4.** This Ordinance is hereby ordered to be published in pamphlet form by the East Peoria City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

**Section 5.** This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

**Section 6.** This Ordinance shall be in full force and effect from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

**PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEVELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS 19th DAY OF June, 2018.**

**APPROVED:**

/s/ David W. Mingus

Mayor

**ATTEST:**

/s/ Morgan R. Cadwalader  
City Clerk

**EXAMINED AND APPROVED:**

/s/ Dennis R. Triggs  
Corporation Counsel

**CITY OF EAST PEORIA**

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CITY CODE REGARDING THE REGULATION OF SMALL WIRELESS FACILITIES  
WITHIN THE PUBLIC RIGHT OF WAY**

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**ADOPTED BY THE  
CITY COUNCIL  
OF THE  
CITY OF EAST PEORIA  
THE 19th DAY OF JUNE 2018**

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**Published in pamphlet form by authority of the City Council of the City of East  
Peoria, Tazewell County, Illinois, this 19th day of June, 2018.**

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**EFFECTIVE JULY 3, 2018**