

# SMALL WIRELESS FACILITIES MODEL ORDINANCE - MASSACHUSETTS

## CITY OF \_\_\_\_\_ In Council

BE IT ORDAINED that Title \_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_, entitled \_\_\_\_\_, is amended by adding the following Chapter \_\_\_\_\_, which reads as follows:

### Chapter \_\_\_\_ STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY

#### Section 1 – Purpose and Scope

(A) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities within the City, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole. Notwithstanding any provision in the Municipal Code to the contrary, no other provision of the Code shall govern or apply to such placement except as expressly provided herein.

(B) New Poles. A request by a wireless provider for a grant of location to install a new pole in the right-of-way in order to support small wireless facilities shall be processed and determined in a nondiscriminatory manner pursuant to the provisions of Chapter *[insert reference to city's pole grant of location ordinance]* of the Municipal Code.

#### Section 2 - Definitions

(A) “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(B) “Applicable Codes” means the building, fire, electrical, plumbing, and mechanical codes adopted by the Commonwealth of Massachusetts and applicable within the City.

(C) “Application” means a request for a permit to collocate small wireless facilities in the ROW or to install a pole in the ROW to support a small wireless facility.

(D) “City pole” means a pole owned, managed or operated by or on behalf of the City.

(E) “Collocate” means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a pole or wireless support structure. “Collocation” has a corresponding meaning.

- (F) "Communications service provider" means a cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a Wireless Provider.
- (G) "Director" means the Director of Public Works or his or her designee.
- (H) "Micro Wireless Facility" means a wireless facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.
- (I) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (J) "Pole" means a pole or similar structure that is or may be used in whole or in part for communications, electric transmission or distribution, lighting, signage, or a similar function. Such term includes city poles but does not include wireless support structures.
- (K) "Rights-of-Way" or "ROW" means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the City.
- (L) "Small wireless facility" means a wireless facility that meets both of the following qualifications: (i) each antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the wireless facility, whether ground- or pole-mounted, is cumulatively no more than 28 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, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services.
- (M) "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 rectifiers, 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.
- (N) "Wireless provider" means a person who provides wireless services or builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures.
- (O) "Wireless services" means any services, whether at a fixed location or mobile, provided to the public using wireless facilities.

(P) "Wireless support structure" means a freestanding structure, such as a monopole; a tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term does not include a pole.

### **Section 3 – Permit, Application and Fees**

(A) Permit Required. No person shall collocate a small wireless facility in the ROW without first obtaining a permit for it, except as otherwise provided in this Chapter.

(B) Application. A wireless provider seeking such a permit, or its duly authorized representative, shall apply to the Director on a form, paper or electronic, provided by the City. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(C) Application Requirements. The application shall contain the following:

- (1) The wireless provider's name, address, telephone number, and e-mail address;
- (2) The name, address, telephone number, and e-mail address of the wireless provider's representative, if different than the wireless provider;
- (3) A general description of the proposed work and an engineering diagram showing the small wireless facility as mounted on the pole or structure, with dimensions.
- (4) A site plan, with sufficient detail to identify the location of the site and show the proposed location of the facilities the applicant seeks to install in the ROW, including any manholes or poles and the size, type, and depth of any conduit or enclosure.

(D) When Application Not Required. An application shall not be required for: (i) routine maintenance of an existing small wireless facility; (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height; or (iii) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing poles, in compliance with applicable codes.

(E) Application Fee. Each application or consolidated application shall be accompanied by a fee of \$100.00.

## Section 4 – Action on Permit Applications

### (A) Review of Small Wireless Facility Applications.

(1) Within ten days of receiving an application, the Director will determine and notify the applicant by email whether the application is complete. If an application is incomplete, the Director will specifically identify the missing information. The processing deadline in subsection (3) is tolled from the date of the email notice of incompleteness to the date the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the Director.

(2) The Director will approve an application unless the proposed collocation or installation fails to comply with applicable codes or the requirements in Section 5 of this Chapter. The Director will issue a permit immediately upon approval of an application.

(3) All applications shall be processed on a nondiscriminatory basis. An application is deemed approved and the permit is deemed issued if the Director fails to approve or deny the application within 60 days of receipt of the application.

(4) The Director shall document the basis for a denial, including the specific code provisions or requirements of Section 5 on which the denial is based, and send the documentation to the applicant on or before the day the Director denies the application. The applicant may cure the deficiencies identified by the Director and resubmit the application within 60 days of the denial without paying an additional application fee. The Director shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial.

(5) Within 30 days of any denial by the Director of an initial application or a resubmitted application, the applicant may appeal to the City Council, which will make a decision within 30 days of the appeal. The City Council shall base its decision exclusively on whether the Director's determination that the proposed collocation fails to comply with the specific applicable code provisions or requirements of Section 5 cited in the denial is correct as a matter of law.

(6) An applicant may in its discretion file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities; provided, however, that the denial of one or more facilities in a consolidated application shall not delay processing of any other facilities in the same application. If any facility in a consolidated application is denied, each such facility may be the subject of a resubmitted application as provided in paragraph 4(A)(4) or an appeal as provided in paragraph 4(A)(5).

(B) Permit Duration. A permit issued under this Chapter shall be of unlimited duration; provided, however, that such permit shall expire if construction of the proposed facility is not commenced within 12 months of the permit issuance date or is commenced and then

suspended for more than six months unless the delay is caused by the lack of commercial power or communications facilities at the site, in which case these periods are automatically extended until six months after such facilities become available at the site. The Director and the applicant may also agree to extend the period within which construction must commence or may be suspended.

### **Section 5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements**

- (A) Small wireless facilities in the ROW shall comply with the following requirements:
- (1) Height. Small wireless facilities may not extend more than ten feet above the pole supporting them.
  - (2) Installation. All small wireless facilities shall be installed in accordance with the applicable codes in force at the time of installation.
  - (3) Access. Wireless providers and their employees, agents, and contractors shall have the right of access to permitted poles, wireless support structures and small wireless facilities in the ROW in accordance with the reasonable and nondiscriminatory policies of the City applicable to all utilities with facilities in the ROW or doing work in the ROW.
  - (4) Repairs. A wireless provider shall repair, at its sole cost and expense, any damage to city streets, sidewalks, curbs, gutters, trees, parkways, city poles or other property, utility lines and systems, or sewer or water systems or lines resulting from the collocation of a small wireless facility in the ROW or the installation of a pole in the ROW. The wireless provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the damage.
- (B) Waiver. The Director of Public Works may waive one or more of the requirements in this section 5 upon good cause shown, as determined by the Director. Such waivers shall be granted in a nondiscriminatory manner.

### **Section 6 – Abandonment and Removal of Facilities**

- (A) Removal. Within ninety days following written notice from the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities collocated on a city pole whenever the City has reasonably determined that such action is necessary for the construction, repair, maintenance, or installation of any City improvement in the ROW or the operations of the City in the ROW.
- (B) Abandonment. The City may require a wireless provider to remove a small wireless facility permitted hereunder within 180 days after the date that the facility ceases to be used unless the wireless provider gives the City reasonable evidence that it is diligently working to place the facility or pole back in service. Should the wireless provider fail to timely remove the small wireless facility or pole, the City may remove such facility and recover the actual, reasonable cost of such removal from the wireless provider.

## Section 7 – Attachment to City Poles in the ROW

- (A) Exclusivity. The City will not enter into exclusive arrangements with any person for the right to collocate on City poles.
- (B) Applications. Applications to collocate small wireless facilities on City poles shall be processed under Section 4.
- (C) Rates. The rate for collocation of small wireless facilities on a city pole shall be \$\_\_\_ per city pole per year.
- (D) Make-Ready Work.
- (1) Within 60 days after receipt of a complete application to collocate small wireless facilities on a city pole, the City shall provide a good faith description of any make-ready work necessary to enable the city pole to support the requested collocation, including pole replacement if necessary. The City will require make-ready work only as necessary to meet applicable codes or industry standards.
- (2) If the City determines to perform make-ready work itself or through a third-party agent, it shall provide a good faith estimate for such work to the wireless provider within 60 days after receipt of a complete application. Fees for make-ready work shall be commercially reasonable and shall not exceed the lesser of: (a) the City's actual costs; or (b) the amount the City charges to other communications service providers for similar work. The City shall exclude from such fees costs related to pre-existing or prior damage or noncompliance or any consultant's fees or expenses.
- (E) Liability. The wireless provider assumes all risk of liability for damages that may occur to persons or property on account of the collocation by it or its agent of a small wireless facility on a city pole in the ROW.
- (F) Insurance. A wireless provider that has been granted a permit to place a small wireless facility on a city pole in the ROW shall maintain in effect, during the time that its small wireless facility is located in the ROW, commercial general liability insurance and commercial automobile liability insurance covering the city against claims, injury or damage to persons or property caused by the proposed work, in amounts of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and \$2,000,000 for each personal injury liability. On request of the City, such wireless provider shall provide certificates of insurance or other evidence of the above coverage. Such a provider may self-insure any required coverage as long as it or its parent maintains a net worth of at least \$200 million.
- (G) Indemnification. A wireless provider granted a permit under this Chapter shall defend, indemnify, and hold harmless the City, its Council, boards, commissions, officials, officers, agents, contractors, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including court costs and reasonable attorney's fees resulting from the negligence of the wireless provider, its

officers, agents, or employees in connection with the permitted work. This indemnity provision shall apply regardless of the merit or outcome of such claim or suit.