

AN ORDINANCE RELATIVE TO SMALL WIRELESS FACILITIES IN THE
PUBLIC RIGHTS-OF-WAY

Be it Ordained by the City Council of the City of Worcester, as follows:

Section 1. Chapter twelve of the Revised Ordinances of 2008, Part One, is hereby amended by inserting a new section twenty-nine as follows:

Chapter 12 – Streets and Sidewalks

§ 29. Small Wireless Facilities in Public Rights-of-Way

(a) Purpose and Intent. The city finds that it is necessary and beneficial for the health, safety and welfare of the community to establish laws to provide for development of small wireless facilities (“small wireless facilities”) within city’s rights-of-way in order to ensure such development does not interfere with its usual and primary purposes, such as to facilitate safe travel. This section applies to the placement and operation of small wireless facilities within the public rights-of-way, without regard to the type or owner of any vertical structure to which they are affixed or attached. The requirements of this section are not inclusive, but are in addition to all other applicable federal, state and local law.

(b) Definitions. As used exclusively in this section and in the City of Worcester, Department of Public Works & Parks, Standard Specifications & Details (“Standard Specifications”), as amended, and in the Permit Manual, City of Worcester, MA, Department of Public Works Management Services (“Permit Manual”), as amended:

abandoned - cessation of all uses of a communications facility for a period of one hundred eighty (180) consecutive days or more. Where a wireless infrastructure provider has applied to place utility poles in the public right-of-way to support the collocation of small wireless facilities, and such collocation is not used by a wireless services provider to provide service within nine (9) months after the date the application is approved, same shall be deemed abandoned;

ADA - the Americans with Disabilities Act, as amended, and the regulations promulgated thereunder;

antenna - communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services;

applicable codes - Massachusetts building, plumbing and electrical code, uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, and the National Electric Code, National Electric Safety Code, and the rules, regulations and provisions of the Federal Communications Commission, the Occupational Safety and Health Administration, and any other state or federal agency regulating wireless communications;

applicant - any person who submits an application and is or is acting on behalf of a wireless services provider or wireless infrastructure provider;

application - a written request on a city small wireless facility application form submitted by an applicant to the department of public works and parks commissioner, to install or operate a small wireless facility within any right-of-way, including a request for a permit to collocate small wireless facilities on an existing utility pole or wireless support structure; or a written request for installation of a new utility pole or wireless support structure for a new small wireless facility, as well as all required exhibits and submittals as required by the application form and the applicable fee for the review of such application;

city utility pole - a utility pole owned by the city in the public right-of-way;

collocate or collocation - to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole;

concealed facility - a wireless facility that is not readily identifiable as a wireless facility and that is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site or in the neighborhood or area. There are two types of concealed facilities:

- base stations - including but not limited to faux panels, parapets, windows, dormers or other architectural features that blend with an existing or proposed building or structure; and
- concealed tower – a tower designed to resemble another structure that is common in the geographic region such as a traditional or decorative light standard or traffic signal or utility pole consistent in size with the height and girth of existing structures in the area;

communications service - cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service;

communications service provider - a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C.

153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider;

dual-purpose facility - a wireless facility that is secondary to the primary function of the right-of-way infrastructure, such as a light pole, utility pole, traffic signal, etc.;

FCC - the Federal Communications Commission of the United States;

fee - a one-time charge paid to the city by the applicant with the application;

historic district - a district, building, property, or site, or group of buildings, properties, or sites that are either designated as an historic district by the city as set forth M.G.L. c. 40C, and Section 17(b) of Article 3 of Part II of these Revised Ordinances, or is the subject of a pending application;

interference – The effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy;

law - a federal, Massachusetts or local statute, regulation, ordinance, order or rule;

neutral host antenna - an antenna or an antenna array designed and used to provide services for more than one (1) wireless provider, or a single wireless provider using more than one (1) frequency band or spectrum, for the same or similar type of services;

permit - a written authorization that must be obtained by the applicant from the city to perform an action or initiate, continue, or complete a project;

person - an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization;

public safety agency - the functional division of the federal government, the commonwealth of Massachusetts, the city, any other unit of state or local government, or a special purpose district located in whole or in part within this commonwealth, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents;

rate - a recurring charge paid by the applicant to the city;

right-of-way - the area on, below, or above a public roadway, highway, street, public sidewalk, or alley dedicated for compatible use, as shown on the official map of the city, as it may be amended from time to time. "Right-of-way" does not include city-owned aerial lines;

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 three (3) 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 three (3) cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than twenty eight (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, 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 for electric distribution, lighting, traffic control, communications, or a similar function;

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 commonwealth 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 a contractor for a wireless services provider for the application submitted to the city;

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;

(c) Development Standards

- (1) Only small wireless facilities are permitted to be installed within a city right-of-way on new or existing utility poles or wireless support structures. All small wireless facilities eligible for administrative approval under this section shall not exceed the size dimensions of the small wireless facility definitions and shall be designed as concealed facilities and shall be subject to the development standards and procedures set forth in Standard Specifications and the Permit Manual.
- (2) New utility poles or wireless support structures shall be designed to match the design parameters established by the Historical Commission for the subject location, or in the absence of such design guidance, match the size, girth and design of any existing utility poles or other vertical structures located in the historic district right-of-way, i.e. decorative light poles.
- (3) Placement of small wireless service facilities within the rights-of-way on city collector streets, cul-de-sacs, local streets and marginal access streets shall be prohibited unless the applicant cannot otherwise provide service to a particular customer or customers without doing so, and the inability to place facilities in such rights-of-way is necessary to accomplish requirements of nondiscriminatory treatment of the applicant in relation to the city's treatment of other wireless service providers. In such circumstances, the applicant shall include with its application sufficient evidence, consistent with industry standards, to justify such placement.
- (4) Whenever small wireless facilities must be placed in a right-of-way with residential or commercial uses on one (1) or both sides, neither utility poles, equipment, antennas or other structures shall be placed in front of said residential or commercial structure. If a right-of-way has residential or commercial structures on only one (1) side, the small wireless facilities shall be located on the opposite side of the right-of-way whenever possible. All small wireless facilities shall be located in such a way that they do not interfere with views from residential structures.

(d) Approval Process

- (1) No work within the right-of-way relating to a small wireless facility shall be performed without a permit(s) from the public works and parks commissioner and such additional permitting authorities as are required by this section or other law, including but not limited to work that involves excavation, electrical service, affects traffic patterns or obstructs pedestrian or vehicular traffic in the city right-of-way. Concurrent with submittal of a small wireless facility application, applicant shall obtain and

submit all permits, licenses, and authorizations that are required for the installation and operation of the small wireless facility from other departments within the city and persons other than the city, including but not limited to private property owners, utilities, and other governmental entities.

- (2) The public works and parks commissioner or designee will review a small wireless facility application and provide a determination of whether it is complete to the applicant in writing within ten (10) days of the date-stamped submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the small wireless facility application, which, if cured, would make the application complete. The small wireless facility application shall be deemed complete on resubmission if the resubmitted materials cure the original deficiencies indicated by the city. Processing timelines restart from the date of resubmission that cures the incompleteness.
- (3) The city shall administratively approve or deny a small wireless facility application on an existing pole or wireless support structure under this section within sixty (60) days from the time the application is deemed complete. The city shall approve or deny a small wireless facility application on a new pole or wireless support structure under this section within ninety (90) days from the time the application is deemed complete. If the city does not approve or deny such small wireless facility application within the applicable time periods above, an applicant shall have the rights available to it under 47 USC §332 to seek judicial relief.
- (4) Applicant is allowed to file a consolidated small wireless facility application for no more than ten (10) separate small wireless facilities and may receive a permit(s) for each small wireless facility.
- (5) The city may remove a small wireless facility from a consolidated application and treat separately small wireless facility locations for which incomplete information has been provided or that are denied. The city will issue a separate permit for each location that is approved.
- (6) The city may deny a small wireless facility application on the basis that it does not meet any of requirements below:
 - (A) Applicable codes;
 - (B) Local law, including ordinances, regulations, including but not limited to Standard Specifications and the Permit Manual, or design standards that concern public safety, traffic safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory concealment requirements,

including screening or landscaping for ground-mounted equipment;

(C) Public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way, including ADA compliance; or

(D) Any historic preservation requirements as set forth below.

(7) If the city denies an application, then the city must:

(A) Document the basis for a denial, including the specific code provisions on which the denial was based;

(B) Send the documentation to the applicant on or before the day the city denies an application.

(e) Application Submittal Requirements. Applicants for small wireless facilities shall submit all information and material detailed in Standard Specifications and the Permit Manual with their application on the city's small wireless facility application form.

(f) Small Wireless Facilities in Historic Districts. Any application proposing the installation of small wireless facilities either within a designated historic district shall comply with the following requirements in addition to those generally applicable above and in Standard Specifications and the Permit Manual:

- (1) Concealment techniques shall be designed to be consistent and harmonious with the nature and character of the historic district, including color, shape and size of proposed equipment;
- (2) New utility poles or wireless support structures shall be designed to match the size, girth, and design of any existing utility poles or other vertical structures located in the historic district right-of-way, i.e. decorative light poles;
- (3) This subsection shall not be construed to limit the city's enforcement of historic preservation in conformance with the requirements adopted pursuant to M.G.L. c. 9, §§ 26-27C, c. 40C, or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101 *et seq.*, and the regulations adopted to implement those laws.

(g) Interference with Public Safety Communications.

- (1) Applicants for small wireless facilities shall certify through a qualified radio frequency engineer in their application that operation of the small wireless facilities, including under maximum licensed operating

parameters, will not cause interference with the frequencies used by the city, commonwealth or any other public safety agency used for public safety communications and shall further provide a list of radio frequencies the applicant will use at that location, which list shall be updated as needed. The applicant shall provide evidence of the certifying engineer's qualifications to make such certification.

- (2) A wireless services provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with the city's and any other public safety agency's communications equipment; unacceptable interference will be determined by and measured by the city in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by the city or any other public safety agency. If a small wireless facility causes such interference, and the wireless services provider has been given written notice of the interference by the city or any other public safety agency, the wireless services provider, at its own expense, shall take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary. The city may terminate a permit for a small wireless facility based on such interference if the wireless services provider is not making a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.
- (3) Any permit issued by the city for a small wireless facility shall be subject to final testing for frequency and power output levels by the city's department of emergency communications after installation and activation to determine whether the small wireless facility creates unacceptable interference to any public safety system. At the reasonable request of the city, the small wireless facility provider shall engage the small wireless facility at maximum operating parameters for such period as required for city to conduct its testing for interference. Such testing shall be at the expense of the city but shall be reimbursed by applicant if the testing reveals unacceptable interference.
- (4) The owner of a small wireless facility shall provide the city's emergency communications director a twenty-four hours / seven days a week (24/7) emergency contact list of not less than two (2) persons responsible for the operation of the small wireless facility, including name, mobile/cellular phone and email address. This list shall be used to contact a responsible person for the wireless services provider or wireless infrastructure provider in the event of an emergency or exigent circumstance. The applicant shall

update this list thereafter as necessary. If the contact list is not current, and no person can be reached during such circumstance, the city reserves the right to take whatever reasonable immediate action necessary to mitigate the emergency until such time as a responsible person for the small wireless facility is contacted. The city shall have no financial responsibility to the owner of the small wireless facility or any wireless service provider arising from such actions.

(h) Application Fees; Supplemental Review.

- (1) Applications for small wireless facilities shall be accompanied by the following fees payable to the city:
 - Application fee for one (1) small wireless facility on an existing utility pole or wireless support structure - \$500.00
 - Application fee for each small wireless facility on an application where two (2) or more facilities are proposed on existing utility poles or wireless support structures - \$350.00 per facility.
 - Application fee for new small wireless facility on a new utility pole or wireless support structure - \$1,000.00.
- (2) There is no application fee due for (i) routine maintenance of small wireless facilities; or (ii) the replacement of small wireless facilities with small wireless facilities that are substantially similar, the same size, or smaller, provided that the wireless services provider notifies the city at least ten (10) days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of this section. However, the wireless facility provider shall obtain any and all other permits and approvals, including but not limited to the permit(s) to work within rights-of-way for such activities that affect traffic patterns or require lane closures.
- (3) The city reserves the right to require, in its sole discretion, a supplemental review by independent experts for any application for a small wireless facility under this section where the complexity of the analysis requires technical expertise, and/or for any request to vary a standard under this section. All the costs of such review shall be borne by the applicant, in addition to scheduled fees.
- (4) Whether based on the results of the supplemental review or the city's own review, the city may require changes to or supplementation of the applicant's submittal(s). The supplemental review may address any or all of the following: (i) the accuracy and completeness of the application and any accompanying documentation; (ii) the applicability of analysis techniques and methodologies; (iii) the validity of certifications provided and conclusions reached; and/or (iv) whether the proposed small wireless

facility complies with the applicable approval criteria and standards of this section, Standard Specifications and the Permit Manual, and other applicable law.

(i) Rates for Small Wireless Facilities within the Right-of-Way. An applicant who places a small wireless facility on a city utility pole or any other structure within a right-of-way in accordance with this section shall (a) execute a license agreement with the city and (b) pay to the city an annual recurring rate of \$270.00 per year, or any such higher rate permitted under FCC rules or federal law and as set forth in the license agreement, for the use of such utility pole.

(j) Required Permit Provisions. Each permit issued by the public works and parks commissioner and each license agreement for small wireless facilities shall be made upon the condition that the applicant agree to the following conditions:

(1) Indemnification. To the fullest extent allowed by law, both the wireless infrastructure provider and wireless services provider (for this paragraph, collectively referred to as “provider”) constructing, installing, operating, repairing, maintaining and using a small wireless facility shall indemnify, defend and hold harmless the city, and its officials, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of, or resulting from, said provider’s breach of any provision of law, including but not limited to Standard Specifications and the Permit Manual, or any asserted negligent act, error or omission of the provider, or its agents or employees, arising from or relating to its small wireless facility. The indemnifications required hereunder shall not be limited by reason of the specification of any particular insurance coverage for any permit. The provider’s obligations under this provision shall not terminate with the expiration or termination of its permit, but shall survive it.

(2) Dispute Resolution. A court of competent jurisdiction located in Worcester County, Massachusetts shall have exclusive jurisdiction to resolve all disputes arising under this section applying the laws of the commonwealth of Massachusetts. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the city shall allow the collocating party to collocate on its poles at annual rates of no more than \$270.00 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

(k) Exceptions to Applicability. Nothing in this section authorizes a party to locate small wireless facilities on:

- (1) property owned by a private party, property that is not located within the rights-of-way, or a privately owned utility pole or wireless support structure within a right-of-way without the consent of the property owner;
- (2) property owned, leased, or controlled by any department or agency of the city used for public park, recreation or conservation purposes without the consent of the affected department or agency, excluding the placement of facilities on rights-of-way located in an affected department or agency's property; or
- (3) property owned by a rail carrier registered under federal law, MBTA Commuter Rail or any other public commuter rail service, or a utility, without the consent of the rail carrier, public commuter rail service, or utility. For the purposes of this subsection, "utility" has the meaning given to that term in M.G.L. c. 166, § 25A. Nothing in this section shall be construed to relieve any person from any requirement (a) to obtain a franchise or a commonwealth-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this section.

Section 2. The provisions of this ordinance shall take effect upon adoption.