

Council Business Meeting

October 18, 2022

Agenda Item	Discussion for Adoption of Ordinance No. 3213 amending AMC 13.02.300 to add Standards For Small Wireless Facilities In The Rights-Of-Way	
From	Doug McGeary	Acting City Attorney
Contact	Doug.mcgeary@ashland.or.us ; 541-552-3350	

SUMMARY

The City Council has asked for further public discussion over establishing city rules and regulations for permitting small wireless facility within the city's Rights-of-Ways consistent with FCC regulations.

POLICIES, PLANS & GOALS SUPPORTED

PREVIOUS COUNCIL ACTION

The City Council has been advised as to the need for amendments to the R-O-W ordinance to accommodate wireless facility within the city's Rights-of-Ways consistent with FCC regulations and Council has received an ordinance for first reading, which was tabled until after having benefit of this instant hearing.

BACKGROUND AND ADDITIONAL INFORMATION

The city has been approached by citizens with special concerns for present and an increasing demand for the deployment of telecommunication facilities within the city boundaries. Not only are there aesthetic concerns for these mechanical structures and components but some citizens have voiced concerned over the technology and the unknown or disputed effects from radiation that emanate from these facilities.

The city also recognizes that small wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the city.

Whether negative effects from these facilities are factual or not, the city must still provide a safe and aesthetically pleasing environment, which these facilities could potentially impact negatively. Thus, it is in the city's interest to regulate for the sheer increase in numbers of these facilities in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible. Also important is to understand that Federal law prohibits state and local governments from imposing more restrictive regulations on small cell wireless facilities than imposed on other similar types of infrastructure (such as wireline communications or cable facilities).

Although many communities have historically handled wireless facility siting through the land use process, new FCC regulations effectively prohibit these procedures. As a result, the current best practice is to place new regulations for small wireless facilities within the public rights-of-way in the city’s streets and highways code rather than its land development code. The city has adopted the model ordinance developed by the League of Oregon Cities to incorporate into the city’s present AMC Chapter 13.02 PUBLIC RIGHTS-OF-WAY ordinance. Where further specificity is needed to guide placement and other aesthetic considerations, the city will adopt additional specific design guidelines periodically for Small Wireless Facilities by resolution to remain responsive to changing laws and technology.

Citizens have been invited to this hearing to present arguments as to the harmful effects of radiation of small wireless facilities. Staff has not advised, instructed these citizens as to their presentation nor fully analyzed information they might present. Staff has instead engaged the services of Prof. William P Johnson, a radio frequency (RF) engineering consultant to discuss the proposed ordinance and with whom the city has previously employed in matters related to explaining RF technology and the city’s compliance with federal law related to this industry.

FISCAL IMPACTS

The City will collect fees for the review of small wireless facilities, as permitted by the FCC. The FCC has determined that the following fees are considered fair and reasonable:

- \$500.00 for non-recurring fees , including a single, up-front application for up to five small wireless facility sites, with an additional \$100.00 for each additional small wireless facility site beyond the initial five sites;
- \$1,000 for non-recurring fees for a new pole to support one or more small wireless facility;
- \$270.00 per year for all recurring fees including any right-of-way access fee (e.g., encroachment permit) or fee for attachment to a municipality-owned structure in the public right-of-way.

STAFF RECOMMENDATION

None.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

None

REFERENCES & ATTACHMENTS

1. Attachment – Prof William P Johnson Resume
2. Attachment – Proposed ordinance
3. Attachment- Proposed resolution for design standards

WILLIAM P. JOHNSON
RF ENGINEERING CONSULTANT

PO Box 20263
ROCHESTER, NY 14602

BILL@WILLIAMPJOHNSON.COM

September 7, 2022

Douglas M. McGeary, Acting City Attorney
City of Ashland
20 E. Main Street
Ashland, Oregon 97520

RE: Small Wireless Facilities Ordinance Development

Dear Mr. McGeary,

It was a pleasure to speak with you by phone yesterday. Thank you for reaching out.

It would be my pleasure to assist you and the city staff as development of the proposed small cell ordinance progresses. I have attached my resume and the current consulting "Terms and Conditions" used for engagement of all municipal client engineering services. Although I am licensed to practice law in New York, the services offered here are for engineering advice and related services only. I will need to defer to you regarding any implications for legal issues in the state of Oregon. At your request and direction, I will participate in online "Zoom" sessions and by phone to assist with clarification of technical issues. I am also available at your discretion to discuss the draft ordinance and any related issues as they arise.

If you have any questions or need additional information please feel free to let me know.

Very truly yours,



William P. Johnson
RF Engineering Consultant

Attachments: Resume and Terms/Conditions

RESUME

William P. Johnson

PO Box 20263 Rochester NY 14602-0263

EDUCATION:

JD (*Juris Doctor*), February, 2007 from University at Buffalo Law School, Buffalo, NY
MSEE (and BSEE), May 1988 (May 1981) from Syracuse University, Syracuse, NY.
BA in Philosophy and Religion, May 1976, from The King's College, New York, NY.

LICENSURE:

Admitted to New York State Bar, February, 2009.

PROFESSIONAL EXPERIENCE:

ROCHESTER INSTITUTE OF TECHNOLOGY, Rochester, NY

September 1989 to June, 2020

Professor and Graduate Program Director, Telecommunications Engineering Technology program, Department of Electrical-Computer-Telecommunications Engineering Technology. Teaching responsibilities included courses in linear electronics, wireless communication systems, RF/microwave technology, and telecommunications systems. <http://people.rit.edu/wpjeee/> Awarded title of Professor Emeritus, June, 2020.

VARIOUS MUNICIPALITIES AND RESIDENT ASSOCIATIONS

Consultant for Cellular/PCS Wireless and Broadcasting Facility Zoning

April 1997 to present

Engineering consultation to municipal and resident associations for Cellular/PCS Telecommunications and broadcasting facility permit applications. Services include RF drive test monitoring, RF propagation plot evaluation and alternate site analysis. Site selection issues such as co-location and public health concerns are explained and presented for resolution at work sessions and public meetings. Technical expert testimony for trial and appeal *Sprint Spectrum L.P. vs. Willoth*, 176 F.3d 630 (2nd Cir. 1999) on behalf of the Town of Ontario - an important precedent regarding the Telecommunications Act of 1996. <http://www.WilliamPJohnson.com/>

MUNICIPAL & ASSOCIATION CLIENTS

ADIRONDACK COUNCIL (NY)	January, 2005 – December, 2005
SCENIC HUDSON, Inc. (NY)	May, 2007 – November, 2010
TOWN of FORT ANN RESIDENT'S ASSOC	March, 2001 – July, 2005
TOWNSHIP HOMEOWNER'S ASSOC. (NJ)	February, 2008 – May, 2008
CITY of ASHLAND, OR	January, 2018 - June, 2020
CITY of AUBURN NY	November, 2015 – January, 2016
TOWN of AURORA, NY	July, 2001 – March, 2010
TOWN of AUSTERLITZ, NY	March, 2019 – June, 2019
TOWN of BETHLEHEM, NY	May, 2017 – June, 2017
TOWN of BOSTON, NY	August, 1997 – December, 2001
TOWN of BRIGHTON, NY	December, 1999 – January, 2008
TOWN of BRUNSWICK, NY	July, 1998 – September, 1999
TOWN of BRUTUS, NY	February, 2001 – May, 2001
TOWN of BUSTI, NY	September, 2002 – July, 2003
TOWN of CAIRO, NY	May, 2014 – July, 2015
TOWN of CAMBRIA, NY	September, 2004 – December, 2004
TOWN of CANANDAIGUA, NY	June, 1997 - August, 2000
TOWN of CARLTON, NY	October, 2005 – December, 2005
TOWN of CAZENOVIA, NY	May, 2007 – April, 2022
VILLAGE of CAYUGA HEIGHTS	November, 2005 – February, 2006

Resume of Professor William P. Johnson (continued)

TOWN of CHAUTAUQUA	December, 2001 – November, 2002
TOWN of CHILI, NY	March, 1998 – August, 2007
TOWN of CICERO	July, 2008 – December, 2008
TOWN of CLARKSON, NY	May, 2007 – March, 2013
TOWN of CLIFTON PARK	August, 2007 – Present
TOWN of CORINTH, NY	October, 2020 – Present
TOWN of CORNING, NY	February, 2002 – March, 2002
TOWN of DELAWARE, NY	June, 2001 – September, 2001
TOWN of DeWITT, NY	January, 2008 – March, 2016
TOWN of EAST BLOOMFIELD, NY	May, 1998
TOWN of ELLERY	February 2002 – April, 2017
TOWN of ELLINGTON	February, 2007 – May, 2007
TOWN of FORT EDWARD, NY	November, 2009 – February, 2016
TOWN of GARDINER, NY	March, 2022 – June, 2022
TOWN of GRAND ISLAND, NY	October, 2008 – December, 2008
TOWN of GENESEO	November, 2006 – May, 2007
TOWN of GREECE NY	May, 2000 – June, 2017
TOWN of GREENFIELD RESIDENT'S ASSOC	February, 2002 – March, 2002
TOWN of HAMBURG, NY	October, 2001 –
TOWN of HAMMOND, NY	September, 2008 – November, 2009
TOWN of HARTLAND, NY	May, 1998
TOWN of HENRIETTA, NY	September, 2001 – July, 2008
TOWN of HYDE PARK, NY	June, 2020 – September, 2020
TOWN of ITHACA	May, 2009 – July 2009
TOWN of IRONDEQUOIT, NY	March, 2002 – July, 2008
TOWN of LAFAYETTE	April, 2007 – May, 2007
TOWN of LAKE LUZERNE	October, 2020 – September, 2021
TOWN of LOCKPORT, NY	May, 2017 – May, 2018
TOWN of LIMA CITIZEN'S ASSOCIATION	July 1997 - August, 1997
TOWN/VILLAGE of LIVONIA, NY	February, 2016 – March, 2019
TOWN of MARION, NY	October, 1999
VILLAGE of MACEDON, NY	August, 2006
TOWN of MENDON, NY	July, 2001 – May, 2017
TOWN of MILTON, NY	July, 2018 – January, 2022
TOWN of NASSAU, NY	January, 2017 – May, 2017
TOWN of NEW HARTFORD, NY	May 2014 – April, 2016
TOWN of NEWARK VALLEY, NY	September, 2005 – October, 2005
TOWN of NORTH HARMONY, NY	May, 2002 – February, 2007
TOWN of OGDEN, NY	December, 2000 – January 2005
TOWN of ONTARIO, NY	May, 1997 - February, 1998
TOWN of ORCHARD PARK, NY	June, 2002 – July, 2007
PALMYRA (PA) TOWNSHIP	June, 2001 – December, 2001
TOWN of PENFIELD, NY	July, 1997 – Present
TOWN of PITTSFORD, NY	March, 1998 – Present
VILLAGE of PITTSFORD, NY	November, 2007 – June, 2008
TOWN of POLAND, NY	September, 2002 – January, 2003
CITY of ROCHESTER, NY	March 1, 1998 – December 31, 2010
TOWN of RODMAN	September, 2006
TOWN of RUSH, NY	April, 1997 – April, 2000
VILLAGE of SCOTTSVILLE	August, 2014 – December, 2014
TOWN of SPAFFORD, NY	July, 2007 – October, 2007
TOWN of STEPHENTOWN, NY	June, 2001 – August, 2001
TOWN of SWEDEN, NY	April, 2001 – October, 2020
TOWN of VICTOR, NY	January, 2002 – April, 2007
TOWN of WALWORTH, NY	June, 1997 – March, 2007
TOWN of WEBSTER, NY	July, 1997 –October, 2009
VILLAGE of WESTFIELD	April, 2005 – September, 2006
TOWN of WEST BLOOMFIELD, NY	January, 2022 – June, 2022
TOWN of WHEATFIELD, NY	September, 2016 – October, 2016

PREVIOUS PROFESSIONAL EXPERIENCE:

BEHAN PLANNING ASSOCIATES, Saratoga Springs, NY

January, 2001 – March, 2001

Served as one of three authors for the engineering sections of the NY Department of State guide manual for wireless telecommunications facility site evaluation and placement (release date April, 2001 through NYS Department of State).

MARS HILL BROADCASTING COMPANY, Inc., Syracuse, NY

December 1978 to present

Presently serving as volunteer director and *pro bono* General Counsel. Past duties included service as consultant during 1994 for technical and management transition. Staff Engineer responsibilities through May 1980 included the design and installation and trouble-shooting of broadcast audio and RF transmission equipment.

MICROWAVE FILTER COMPANY, INC., East Syracuse, NY

September 1989 to November 2002

Consultant for various RF/microwave design projects and in-plant educational activities.
June 1980 to August 1989

Chief Engineer, Director of Engineering, and Vice President. Responsibilities included the management and technical direction of the company's research, development, and design engineering operation. In addition, other full and part-time employment in the electronics field since 1971.

COMMUNICATIONS AND ENERGY CORP., Syracuse, NY

November 1992 to April 1993

Consultant for RF/Microwave circuit simulation and test.

SMITH CORONA CORPORATION, Cortland NY

July 1991 to September 1992

Consultant for high-volume product EMI/EMC design and compliance.

MEMBERSHIPS:

Institute of Electrical and Electronics Engineers (IEEE)

New York State Bar Association

New York State Academy of Trial Lawyers

SELECTED ACTIVITIES/PRESENTATIONS/PUBLICATIONS:

2018 IEEE International Symposium on Technologies for Homeland Security (HST)

"Applying Machine Learning in Managing Deployable Systems" (see https://www.researchgate.net/publication/329649929_Applying_Machine_Learning_in_Managing_Deployable_Systems)

"Providing first responders with real-time status of cellular networks during a disaster" (See https://www.researchgate.net/publication/329648918_Providing_first_responders_with_real-time_status_of_cellular_networks_during_a_disaster)

Planning and Design Manual for the Review of Applications for Wireless Telecommunications Facilities (New York Department of State Division of Local Government Services, March, 2001)

Johnson, W.P. and A.T.Adams "Multiple-Post Obstacles in Rectangular Waveguide: Theory and Experiment", National Radio Science Meeting, Program and Abstracts (Boulder, CO: January, 1989), p. 60.

Resume of Professor William P. Johnson (continued)

Masters Thesis: "Measured Response of Various Waveguide Inductive Post Arrays Compared to Theoretical Results", May, 1988.

Co-author of The ASTI Handbook (published by Microfilco Press), a reference text on satellite ground system interference suppression.

Developed and presented a 3-hour training course on interference avoidance and suppression for the Satellite Business Communications Association's (SBCA) member certification program.

Author of several industry publication articles dealing with RF/Microwave system interference reduction and suppression

ORDINANCE NO. _____

AN ORDINANCE AMENDING AMC CHAPTER 13.02 PUBLIC RIGHTS-OF-WAY AND ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE CITY OF ASHLAND

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **bold lined through** and additions are **bold underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the wireless industry needs small wireless facilities, including facilities commonly referred to as small cells, deployed in the public rights-of-way; and

WHEREAS, the City further recognizes that the City must balance the benefits from small cell infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible; and

WHEREAS, the City intends to adopt a new code consistent with local, state and federal laws, standards and requirements.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 13.02 PUBLIC RIGHTS-OF-WAY of the Ashland Municipal Code is hereby amended and by adding the following Sections as follows:

Chapter 13.02

PUBLIC RIGHTS-OF-WAY

Sections:

- **13.02.010 Definitions**
- **13.02.020 Jurisdiction**
- **13.02.030 Scope of Regulatory Control**
- **13.02.040 Right-of-Way Encroachment**
- **13.02.050 Encroachment Permits**
- **13.02.060 Standards and Conditions**
- **13.02.070 Permit Issuance**
- **13.02.090 Revocation of Permits**
- **13.02.100 Removal of Encroachment**
- **13.02.110 Liability**
- **13.02.130 Obligations of the City of Ashland**
- **13.02.200 Appeals**
- **13.02.300 Standards For Small Wireless Facilities In The Rights-Of-Way.**
- **13.02.900 Penalties**

13.02.010 Definitions



(1) For the purpose of Sections 13.02.010 – 13.02.200 in this chapter, the following mean:

A. *Encroach.* The act of a private individual extending from their abutting private property into a public right-of-way, public easement or public property.

B. *Encroachment.* Area in a public right-of-way, public easement or public property that is being encroached upon by a private individual.

C. *Encroachment Permit.* A revocable permit granted by the Public Works Director to allow permittee to encroach upon a public right-of-way, public easement or public property where compliance with this chapter can be demonstrated.

D. *Person.* Individual, corporation, association, firm, partnership, joint stock company, and similar entities.

E. *Public Easement.* An easement granted to the City for a public purpose, including, but not limited to the purpose of installing or maintaining public or private utility infrastructure for the provision of water, power, heat or telecommunications to the public.

F. *Public Property.* Real property owned by the City and open to the public for public use.

G. *Public rights-of-way.* Include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including subsurface and air space over these areas.

H. *Public Works Director*. The City Public Works Director or his/her authorized designee.

I. Within the City: Territory over which the City now has or acquires jurisdiction for the exercise of its powers.

(2) For purposes of Sections 13.02.300 – 13.02.200 in this chapter, the following mean:

(A) “Antenna” means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15.

(B) “Antenna Equipment” means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(C) “Antenna Facility” means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

(D) “Applicable codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

(E) “Applicant” means any person who submits an application as or on behalf of a wireless provider.

(F) “Application” means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

(G) “City Structure” means a structure located in the rights-of-way within the City’s jurisdictional boundaries that is owned, managed or operated by the City or any subdivision or instrumentality thereof, including municipal electric utilities. Including, but not limited to streetlights, traffic signals, utility poles, or building.

(H) “Collocate” means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. “Collocation” has a corresponding meaning.

(I) “Day” means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day.

(J) “Decorative pole” means a city structure that is specially designed and placed for aesthetic purposes.

(K) “Historic district” means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a locally designated historic district as of the effective date of this Chapter or in a locally designated historic district existing when an application is submitted.

(L) “Permissions” means City authorized permits, agreements or licenses necessary for small wireless deployment.

(M) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

(N) “Pole” means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

(O) “Rights-of-Way” or “ROW” has the same definition as section (1)(G) in this Section.

(P) “Routine Maintenance” means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure.

(Q) “Small wireless facility” means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

(1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,

(3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,

(4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

(R) “Structure” means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, whether or not it has

an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).

(S) “Wireless Infrastructure Provider” means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but that is not a wireless services provider.

(T) “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.

(U) “Wireless Services Provider” means a person who provides personal wireless services (whether or not it is comingled with other services).

13.02.020 Jurisdiction



As relates to this Chapter 13.02, the City has jurisdiction and exercises regulatory control over all public rights-of-way within the City under the authority of the City charter and state law.

13.02.030 Scope of Regulatory Control



The City has jurisdiction and exercises regulatory control over each public right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way. The City has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, or other means. **A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter 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.**

13.02.040 Right-of-Way Encroachment



A. *Prohibition.* Except as provided in subsection **C** of this section, no person or entity may occupy or encroach on a public right-of-way without the permission of the City. The City grants permission to use public rights-of-way, by franchises, licenses, concessions and permits.

B. *Standard Forms.* Franchises, licenses, concessions and permits for use of public rights-of-way shall comply with all applicable requirements for occupancy or encroachment of such areas as set forth in AMC Chapter **13.03** and other applicable provisions of the Ashland Municipal Code. Franchises, licenses, concessions and permits shall be submitted on a City standard form franchise, license, concession, or permit template, together with required fees, if any. Such standard fees may be adopted and amended by resolution of the City Council.

C. *City Functional Items.* The City of Ashland is not required to obtain permits or other City authorizations to place City utilities, facilities or other structures in the right-of-way, including “functional items” intended for public usage. City functional items include, but are not limited to, a City

standard bench, water fountain, planter box, garbage receptacle, ash can, bike rack, bollard, publication box, or other functional items identified by resolution of the City Council. The City Council resolution shall identify functional items and establish minimum standards for such items.

D. Donated or Loaned Functional Items. An abutting property owner together with the occupant may donate or loan to the City of Ashland a City standard functional item for use in an adjacent sidewalk permit area. Other persons or entities may also donate or loan functional items, for use in nonadjacent public areas. Items accepted on loan require insurance and a maintenance/hold harmless/indemnity agreement in a form approved by the City. Donated items do not require insurance or a maintenance agreement, but the donations must be accepted by the City to be eligible for placement. The City Manager is delegated authority to accept or reject donations and loans for purposes of this chapter, in the Manager’s sole discretion. After demonstrated compliance with this section, the City Public Works Director may authorize in writing the placement of a donated or loaned City standard functional item, in locations meeting, at a minimum, the clearance requirement of AMC Chapter [10.64](#) or in approved locations shown on an adopted Downtown Sidewalk Usage Map. Items not strictly complying with minimum standards for such City functional items, (e.g., a decorative art bench) may be permitted through the public art process in AMC Chapter [2.17](#). (Ord. 3192 § 91, amended, 11/17/2020; Ord. 3137, amended, 2017; Ord. 3028, amended, 08/03/2010; Ord. 2989, amended, 11/01/2009)

13.02.050 Encroachment Permits



A. Permits Required for Encroachment; Exemptions.

1. *Permits Required.* It shall be unlawful for any person to do any of the following without first obtaining an encroachment permit from the Public Works Director:

- a. Erect or cause to be erected any structure, retaining wall, or fence in a public right-of-way, public easement, or public property, or
- b. Place or maintain any landscaping materials or any type of fill in, over or upon any dedicated public right-of-way, public easement or public property.

c. Permits for a small wireless facility are subject to sections AMC Chapter 13.02.300 – 315.

2. *Specific Exemptions.* Certain encroachments are exempt from the permit requirement of AMC [13.02.020](#). Exempt encroachments are those which would have a minor impact on the present or planned use of the public right-of-way, public easement or public property and those which are expressly exempted herein. The following encroachments are exempt encroachments as long as they do not create a vision clearance hazard as defined in AMC [18.68.020](#):

- a. Mailboxes and their enclosing structures,
- b. Temporary signs and banners permitted by the Sign Code (AMC [18.96](#)),
- c. Guard/handrails along edges of driveway approaches, walks, stairs, etc. that encroach in public right-of-way, and

d. Lawns, plants and approved street trees encroaching in public right-of-way that do not obstruct visibility for pedestrians, bicyclists and motorists.

3. *Additional Exemptions.* The Public Works Director may grant additional exemptions as long as the encroachment does not create a vision clearance hazard as defined in AMC [18.68.020](#).

B. Application and Fee Required.

1. Any person desiring to locate or maintain an encroachment shall submit an application to the Director of Public Works. The application shall include a description of the proposed encroachment and a scale drawing illustrating the nature and extent of the proposed encroachment and its relationship to adjoining properties. If the applicant is not the owner of the property that will be benefitted by the encroachment, the owner of the benefitted property shall also sign the application as a co-applicant. The Public Works Director may require an actual survey to determine the exact location of any public or private improvements that will be encroaching in the right-of-way.

2. A fee in the amount established by resolution of the City Council shall be paid at the time of the application.

C. Review of Application. The Public Works Director shall conduct a review of the application for an encroachment permit to determine its compliance with the standards in AMC [13.02.060](#), and the Public Works Director shall request comments from affected City departments, utility companies and agencies regarding the impact of the proposed encroachment. (Ord. 3040, added, 11/16/2010; Ord. 3028, amended, 08/03/2010; Ord. 3009, amended, 04/20/2010)

13.02.060 Standards and Conditions



The Public Works Director may approve the issuance of an encroachment permit for an encroachment where compliance with the following standards can be demonstrated or specific findings are made that the standard is not applicable. The Public Works Director may attach any conditions to the issuance of the permit that are required in any applicable planning approvals or reasonably related to ensuring compliance with this section, or other applicable City codes.

A. Standards for Approval.

1. Horizontal clearances of at least five (5) feet shall be maintained on all sides of all utilities including electrical power, communications, sewer, storm drain, and water. This distance shall be measured between proposed encroachments and existing or proposed utility lines, manholes, appurtenances, and fixtures, including but not limited to fire hydrants, above ground transformers, cabinets, and other structures. Clearances around water meters shall be at least one (1) foot behind and two (2) feet from the sides when measured from the outside edges of the box. A larger horizontal clearance may be required if utilities mandate larger clearances for specific structures; for example, additional clearance may be required in front of electrical cabinets and transformers. Requests by utility providers for larger horizontal clearances or additional conditions shall be considered for inclusion into the permit. The applicant shall pay for relocation of the existing utility lines, manholes, appurtenances, and fixtures if this standard cannot be met.

2. Vertical clearances between utilities and natural landscape materials or structures placed below or above those facilities shall be the distance required by the affected utilities. Conditions requested by the utility providers shall be considered for inclusion into the permit.
3. Proposed encroachments, improvements and temporary measures shall not cover, prevent access to, or block the flow of water into inlets, basins, ditches, or drainage ways. Grading changes shall not otherwise alter the drainage patterns in the right-of-way without written approval of a grading and erosions control plan by the Public Works Director.
4. Sufficient space for off-street parking, loading, and pedestrian travel shall be maintained. The encroachment shall not result in a loss of area needed for parking, vehicular maneuvering, or pedestrian travel.
5. It is determined that the requested encroachment is consistent with the current use of the public right-of-way, easement or public property.

B. *Conditions.*

1. When the Public Works Director determines that allowing the requested encroachment may subject the City to potential liability, a condition of permit issuance shall be the filing with the City Risk Manger of a policy of insurance and form of policy by an insurance company licensed to do business in the State of Oregon. The policy shall protect the City, its officers, agents, and employees, and the abutting property owners, lessees and tenants from any and all claims for injury or damage to persons or property that might result from the placing and/or maintenance of the permitted encroachment. The amount of the insurance policy shall be at least the limits of public body liability under the Oregon Tort Claims Act. The policy shall also contain a provision that the City Risk Manager shall be notified at least 30 days prior to any cancellation of such insurance. The permittee shall maintain the insurance for the term of the permit issued. Failure to maintain the insurance shall result in automatic revocation of the permit.
2. All work within the public right-of-way, public easement, or public property shall be consistent with engineering plans, profiles, specifications, and standards approved by the Public Works Director in accordance with City requirements.
3. The Public Works Director may place a limit on the time the proposed encroachment may be located in or on the right-of-way, public easement or public property.
4. To ensure that encroachments do not contribute to visual blight or create a safety hazard, conditions of permit approval may include a requirement that the encroachment be appropriately maintained.
5. The City may impose a charge for the use of the public right-of-way, public easement or public property. (Ord. 3040, added, 11/16/2010)

13.02.070 Permit Issuance



- A. The Public Works Director may approve, modify and approve, or deny the application for an encroachment permit.

B. Ministerial decisions do not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. Ministerial decisions include, but are not limited to, site plan approval of building or other specialty permits and final subdivision and planned unit development plans where there are no material deviations from the approved preliminary plans. Because no discretion is involved, ministerial decisions do not qualify as land use or limited land use decisions. The process requires no notice to any party other than the applicant. The Public Works Director's decision is final and not appealable by any party through the normal land use process. Ministerial decisions may be appealed as provided in AMC [13.02.040](#). (Ord. 3040, added, 11/16/2010)

13.02.090Revocation of Permits



All right-of-way, easement or public property encroachment permits shall be revocable by the City at any time such revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the City arising from a revocation.

Any permit issued under this section shall be automatically revoked if the permittee fails comply with any conditions of the permit, or fails to begin installation of the allowed encroachment within ninety (90) days after issuance of the permit unless an extension is requested prior to the expiration of the ninety (90) day period. (Ord. 3040, added, 11/16/2010)

13.02.100Removal of Encroachment



Upon revocation, the permittee or any successor permittee shall, at the permittee's own expense, remove the permitted encroachment within thirty (30) days after written notice has been provided by the City unless a shorter period is specified in the notice of revocation.

If the permittee does not remove the encroachment and return the right-of-way, public easement or public property area to a condition satisfactory to the Public Works Director, the City shall do so and the permittee shall be personally liable to the City for any and all costs of returning the right-of-way, public utility easement or public property to a satisfactory condition, including the removal of structures and reconstruction of streets and/or pathways. If the permittee fails to pay the City for the costs incurred after the City bills permittee, the costs shall be imposed as a lien upon the property. Payment of such costs shall not prevent the City from pursuing any other remedy available at law or pursuing any other penalty. (Ord. 3040, added, 11/16/2010)

13.02.110Liability



The permittee, and owner of the benefitted property if different than the permittee, shall be liable to any person who is injured or otherwise suffers damage by reason of any encroachment allowed in accordance with the provisions of this section. Furthermore, the permittee shall be liable to the City of Ashland, its officers, agents and employees, for any judgment or expense incurred or paid by the City, its officers, agents and employees, by reason of the existence of an approved encroachment. (Ord. 3040, added, 11/16/2010)

13.02.130Obligations of the City of Ashland



The exercise of jurisdiction and regulatory control over a public right-of-way by the City is not official acceptance of the right-of-way for public access and does not obligate the City to open or improve any part of the right-of-way. Upon improvement of any public right-of-way to city street standards, the City shall accept by resolution the improvement and maintain and repair such improvement to the standard to

which it has been improved. For purposes of nuisance-type ordinances imposing obligations upon property owners, (e.g. snow removal, weeds and noxious vegetation, sidewalk maintenance) the City shall be responsible for compliance with such ordinances in public rights-of-way adjacent to or abutting city-owned or controlled real property. (Ord. 3040, amended, 11/16/2010)

13.02.200Appeals



The Uniform Administrative Appeals Process outlined in AMC 2.30 shall apply to all protests of encroachment permits. Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal. The Hearing Officer's decision is final and not appealable by any party through any land use process. The Hearing Officer's decision may only be appealed through a writ of review proceeding in Jackson County Circuit Court. (Ord. 3137, amended, 2017; Ord. 3040, added, 11/16/2010)

13.02.300 Standards For Small Wireless Facilities In The Rights-Of-Way. Where otherwise not provided in or contrary to this subsection for Wireless Facilities, all other provisions of AMC 13.02 Public Rights of Way remain applicable. The city will adopt additional specific design guidelines periodically for Small Wireless Facilities by resolution to remain responsive to changing laws and technology.

13.02.301 Permitted Use; Application and Fees

(A) Permitted Use. The following uses within the rights-of-way shall be a permitted use, subject to compliance with the city's applicable design standards, administrative review only and issuance of a permit as set forth in this Chapter:

(1) Collocation of a small wireless facility; and,

(2) Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility.

(B) Permissions Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility described in Section 3(A) in the rights-of-way, without first filing an application for the facility and obtaining a city's permit, license, or agreement.

(C) Application Requirements. Application requirements and forms are subject to AMC 13.02.050 (B) and (C).

(D) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; or (2) the replacement of a small wireless facility with another small wireless facility that is the same, substantially similar or smaller in size and weight and height. The City may require a permit for work within the right of way. Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW.

(E) The City shall have the right to employ qualified city staff or third-party RF engineer to conduct an annual random and unannounced test of small wireless facility installations located within the City to certify their compliance with all FCC radio-frequency transmission power limits as they pertain to exposure of the general public at maximum operating power. The reasonable cost of such tests shall be paid by the Permittee.

(1) In the event that such city or independent tests reveal that any small wireless is transmitting RF radiation or is contributing to RF radiation in excess of FCC exposure guidelines as they pertain to the general public, the City shall notify the Wireless Provider and all residents living within 1500 feet of the small cell installation(s) of the violation, and the Wireless Provider shall have forty-eight (48) hours to bring the SCF(s) into compliance. Failure to bring the SCF(s) into compliance and the City shall have the right to require the removal of such installation(s), as the City in its sole discretion may determine is in the public interest.

(F) Information Updates. Any amendment to non-material information contained in an application shall be submitted in writing to the City within thirty (30) days of the change.

(G) Application Fees. Application fees shall be set by resolution, but in no case shall fees exceed the following:

(1) \$500 for up to the first five small wireless facilities in the same application, with an additional \$100 for each small wireless facility beyond five in the same application, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.

(2) \$1000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Chapter, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.]

13.02.303 Action on Administrative Permit Applications On Wireless Facilities

(A) The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole:

- (1) Fail to comply with AMC 13.02.060 Standards and Conditions.**
- (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;**
- (3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;**

(4) Fails to comply with applicable codes, standards and regulations, including the City’s design standards; or

(5) Fails to comply with the provisions in this AMC 13.02.300 – 315.

(B) The City must act on an application within the applicable shot clock and provide written notice to the applicant if the application is denied. The written notice shall state the reasons for denial, with reference to specific code provisions, ordinance, application instruction or otherwise publicly stated procedures on which the denial was based, and be sent to the applicant within five (5) days after the City denies the application or before the applicable shot clock expires, whichever occurs first.

(C) Batch Applications.

13.02.305 Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

(A) Maximum Size of Permitted Use. Any wireless provider that seeks to install, modify, or replace facilities on a pole in the rights-of-way that exceeds the height limits contained in Section 13.02.010(2)(R), shall be subject to applicable requirements.

...

(B) Decorative Poles. Subject to this code and applicable design standards, a wireless provider is permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such replacement pole shall, to the extent feasible, replicate the design of the pole being replaced.

(C) Historic District. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

(D)

13.02.307 Effect of Construction/Work Permit

(A) Permit Duration.

(1) A permit for construction granted pursuant to this Section shall be valid for a period of _____ days after issuance unless the City agrees to extend this period for good cause, including but not limited to delay caused by the lack of commercial power or communications facilities, or by other events outside of the reasonable control of the wireless provider.

(2) The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and

an applicant's right to terminate a permit at any time.

13.02.309 Removal, Relocation or Modification of Small Wireless Facility in the ROW

- A. **Notice.** Notice of removal of encroachment is subject to AMC 13.02.100.
- B. **Removal or relocation of Facilities.** If the City plans a project that would require utilities that includes small wireless facilities (together, the "parties") to remove or relocate their facilities that are located in the highway right of way, the city shall notify affected parties of the project in writing as soon as is practicable. The city will coordinate with the affected parties to discuss the project's scope, planning, design phase, costs, and schedule to minimize or eliminate costs to the public body and the parties. The city is not required to avoid or minimize costs to the parties in a way that materially affects performance of the project.
- C. **Emergency Removal or Relocation of Facilities.** The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City in the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider promptly after cutting or removing a small wireless facility.
- D. **Damage and Repair.** The City may require a wireless provider to repair all damage to the rights-of-way directly caused by the activities of the wireless provider and return the rights-of-way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within days after written notice, the City may affect those repairs and charge the applicable party the actual, documented cost of such repairs.
- E. **Abandonment of Facilities.** Any small wireless facility that is no longer in use shall be removed by the Permittee within 30 days of deactivation.

13.02.311 Collocation on City Structures in the ROW

(A) Collocation on City Structures. Small wireless facilities may be collocated on city structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city structures in the rights-of-way. A person who purchases or otherwise acquires a City structure is subject to the requirements of this section.

(b) Make-Ready. The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the City must be nondiscriminatory, competitively neutral, reasonable, comply with this Chapter and be subject to the following:

- (1) The City or any person owning, managing, or controlling the poles owned by the City will provide a good faith estimate for any make-ready work reasonably necessary to make a specific city pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.
- (2) The City or any person owning, managing, or controlling the poles owned by the city shall not require more make-ready work than required to meet applicable codes or may be reasonably necessary to avoid interference with other attachments on the pole . Fees for make-ready work shall not include costs related to pre-existing or prior damage and non-compliance. Fees for makeready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any revenue or Contingency based consultant fees or expenses of any kind.

13.02.315 Rates for ROW and Collocation on City Structures in the ROW

(A) The recurring rate for use of the ROW and attachment of small wireless facilities to a city structure in the ROW shall be subject to the following requirements:

- (1) Annual Rate. A wireless provider authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the City compensation for use of the rights-of-way and collocation on city structures in the ROW a rate that is based on (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. This rate, together with the one-time application fees, shall be the total compensation that the wireless provider is required to pay the city for the deployment of each small wireless facility in the ROW and any associated pole. The FCC’s safe harbor rate is an aggregate annual rate not to exceed \$270 per small wireless facility. This fee is subject to change
- (2) Payment Obligation Upon or After Facility Removal. A wireless provider may remove one or more of its small wireless facilities at any time from the rights-of-way and city structures in the ROW with the required permits. The wireless provider will cease owing the City compensation, as of the date of removal, for such removed facilities.

13.02.900Penalties



Any person who violates any provision of this Chapter is subject to Section [1.08.020](#) of the Ashland Municipal Code. In addition to other legal and equitable remedies available to the City of Ashland:

A. Unless otherwise provided herein, violation of any section of this chapter AMC [13.02](#) is a Class II violation.

B. A knowing violation of 13.02.040 is punishable of not more than 30 days jail and/or \$500 fine. (Ord. 3137, amended, 2017)

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of July, 2022, and duly PASSED and ADOPTED this ____ day of August, 2022.

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of August, 2022.

Julie Akins, Mayor

Reviewed as to form:

Douglas M McGeary, City Attorney

RESOLUTUION NO. _____

**A RESOLUTION TO ESTABLISH DESIGN STANDARDS FOR
AMC CHAPTER 13.02 SMALL WIRELESS FACILITIES IN THE
RIGHTS-OF-WAY IN THE CITY OF ASHLAND**

WHEREAS, the City of Ashland has adopted Chapter 13.02.300 et sec establishing standards for small wireless facilities in the Rights-Of-Way to provide for the permitting process and mutual obligations of the city and the permittee for placement and operation of small wireless facilities; and

WHEREAS, the City recognizes that the City must further balance the benefits from small cell infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible; and

WHEREAS, in order to maintain control of accumulative impacts of from various permittees utilizing the City's rights of way for placement and operation of their facilities, the city must adopt additional specific design guidelines periodically for Small Wireless Facilities to remain responsive to changing laws and technology; and

WHEREAS, such design controls are best established through resolution that allows for a more responsive process by which to make prompt and immediate changes to design specifications, restrictions and allowances on small wireless facilities given the likely advent of changes in laws and technology in this area of telecommunications.

**THEREFORE, COMES NOW THE COUNCIL FOR THE CITY OF ASHLAND
DOES RESOLVE AS FOLLOWS:**

Small Wireless Facility Design Standards For City Rights-of-Way

- A. Definitions.** Definitions for these design standards are those provided in AMC Chapter 13.02.300 Standards For Small Wireless Facilities In The Rights-Of-Way.
- B. General Requirements.**
 - a. Ground-mounted equipment in the right-of-way is discouraged, unless the applicant can demonstrate that pole-mounted equipment is not technically feasible, or the electric utility requires placement of equipment on the ground (such as an electric meter). If ground mounted equipment is necessary, then the applicant shall conceal the equipment in a cabinet, in street furniture or with landscaping.
 - b. Replacement poles, new poles and all antenna equipment shall comply with the Americans with Disabilities Act ("ADA"), city construction and sidewalk clearance standards and city, state and federal laws and regulations in order to provide a clear and

safe passage within, through and across the right-of-way. Further, the location of any replacement pole, new pole, and/or antenna equipment must comply with applicable traffic requirements, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices).

- c. Replacement poles shall be located as near as feasible to the existing pole. The abandoned pole must be removed within ten business days.
 - d. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section H.
 - e. No advertising, branding or other signage is allowed unless lawfully permitted and approved by the Public Works Director as a concealment technique or as follows:
 - i. Safety signage as required by applicable laws, regulations, and standards; and
 - ii. Identifying information and 24-hour emergency telephone number (such as the telephone number for the operator's network operations center) on wireless equipment in an area that is visible.
 - f. The total volume of multiple antennas on one structure shall not exceed fifteen (15) cubic feet, unless additional antenna volume is requested and approved pursuant to Section H.
7. Antennas and antenna equipment shall not be illuminated except as required by municipal, federal or state authority, provided this shall not preclude deployment on a new or replacement streetlight.
- g. Small wireless facilities may not displace any existing street tree or landscape features unless in compliance with the Ashland Municipal Code and Land Use Code, and at minimum: (a) such displaced street tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the City, and (b) the applicant submits and adheres to a landscape maintenance plan or agrees to pay an appropriate in-lieu fee for the maintenance costs.
- C. Small Wireless Facilities Attached to Wooden Poles and Non-Wooden Poles with Overhead Lines.** Small wireless facilities located on wooden utility poles and non-wooden utility poles with overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section H:
- a. Proposed antenna and related equipment shall meet:
 - i. The City's design standards for small wireless facilities.
 - ii. The pole owner requirements; and
 - iii. National Electric Safety Code ("NESC") and National Electric Code ("NEC") standards.
 - b. The pole at the proposed location may be replaced with a taller pole or extended for the purpose of accommodating a small wireless facility; provided that the replacement or extended pole, together with any small wireless facility, does not exceed 50 feet in height or 10 percent taller than adjacent poles, whichever is greater. The replacement or extended pole height may be increased if required by the pole owner, and such height increase is the minimum necessary to provide sufficient separation and/or clearance from electrical and wireline facilities. Such replacement poles may either match the approximate color and materials of the replaced pole or shall be the standard new pole used by the pole owner in the city.
 - c. To the extent technically feasible, antennas, equipment enclosures, and all ancillary equipment, boxes, and conduit shall match the approximate material and design of the surface of the pole or existing equipment on which they are attached, or adjacent poles

located within the contiguous right-of-way. Near matches may be permitted by the City when options are limited by technical feasibility considerations, such as when high-frequency antennas cannot be placed within an opaque shroud but could be wrapped with a tinted film.

- d. Antennas which are mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
- e. No antenna shall extend horizontally more than 20 inches past the outermost mounting point (where the mounting hardware connects to the antenna), unless additional antenna space is requested and approved pursuant to Section H.
- f. Antenna equipment, including but not limited to radios, cables, associated shrouding, disconnect boxes, meters, microwaves and conduit, which is mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
- g. Antenna equipment for small wireless facilities must be attached to the pole, unless otherwise required by the pole owner or permitted to be ground-mounted pursuant to subsection (B)(a) above. The equipment must be placed in an enclosure reasonably related in size to the intended purpose of the facility.
- h. All cables and wiring shall be covered by conduits and cabinets to the extent that it is technically feasible, if allowed by pole owner. The number of conduits shall be minimized to the extent technically feasible.

D. Small Wireless Facilities Attached to Non-Wooden Light Poles and Non-Wooden Utility Poles without Overhead Utility Lines.

Small wireless facilities attached to existing or replacement non-wooden light poles and non-wooden utility poles without overhead lines shall conform to the following design criteria unless a deviation is requested and approved pursuant to Section H:

- a. **External Equipment.** The antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for future frequencies and/or technologies, not to exceed the volumetric requirements described in Section A. If the equipment enclosure(s) is mounted on the exterior of the pole, the applicant is encouraged to place the equipment enclosure(s) behind any decorations, banners or signs that may be on the pole. Conduit and fiber must be fully concealed within the pole.
- b. **Concealed Equipment.** All equipment (excluding disconnect switches), conduit and fiber must be fully concealed within the pole. The antennas must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible.
- c. Any replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section H.
- d. The height of any replacement pole may not extend more than 10 feet above the height of the existing pole unless such further height increase is required in writing by the pole owner.

E. New Poles. Small wireless facilities may be attached to new poles that are not replacement poles under sections C or D, installed by the wireless provider, subject to the following criteria:

- a. Antennas, antenna equipment and associated equipment enclosures (excluding disconnect switches), conduit and fiber shall be fully concealed within the structure. If such concealment is not technically feasible, or is incompatible with the pole design, then the antennas and associated equipment enclosures must be camouflaged to appear as an

integral part of the structure or mounted as close to the pole as feasible and must be reasonably related in size to the intended purpose of the facility, not to exceed the volumetric requirements in Section (A)(3).

- b. To the extent technically feasible, all new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of adjacent poles located within the contiguous right-of-way unless a different design is requested and approved pursuant to Section H.
- c. New poles shall be no more than forty (40) feet in height unless additional height is requested and approved pursuant to Section H.
- d. Wireless providers shall install small wireless facilities on existing or replacement poles instead of installing new poles, unless the wireless provider can document that installation on an existing or replacement pole is not technically feasible or otherwise not possible (due to a lack of owner authorization, safety considerations, or other reasons acceptable to the Public Works Director).

F. Historic District Requirements.

- a. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to remain compatible with the existing integrity of the Historic District and shall have a similar appearance, including material and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

G. Strand Mounted Equipment. Strand mounted small wireless facilities are permitted, subject to the following criteria:

- a. Each strand mounted antenna shall not exceed 3 cubic feet in volume, unless a deviation is requested and approved pursuant to Section H.
- b. Only 2 strand mounted antennas are permitted between any two existing poles.
- c. Strand mounted devices shall be placed as close as possible to the nearest pole and in no event more than five feet from the pole unless a greater distance is required by the pole owner.
- d. No strand mounted device will be located in or above the portion of the roadway open to vehicular traffic.
- e. Strand mounted devices must be installed with the minimum excess exterior cabling or wires (other than original strand) to meet the technological needs of the facility.

H. Deviation from Design Standards.

- a. An applicant may obtain a deviation from these design standards if compliance with the standard: (a) is not technically feasible; (b) impedes the effective operation of the small wireless facility; (c) impairs a desired network performance objective; (d) conflicts with pole owner requirements; or (e) otherwise materially inhibits or limits the provision of wireless service.
- b. When requests for deviation are sought under subsections (I)(1)(a)-(e), the request must be narrowly tailored to minimize deviation from the requirements of these design standards, and the Public Works Director must find the applicant's proposed design provides similar aesthetic value when compared to strict compliance with these standards.
- c. Public Works Director may also allow for a deviation from these standards when it finds the applicant's proposed design provides equivalent or superior aesthetic value when compared to strict compliance with these standards.

- d. The small wireless facility design approved under this Section H must meet the conditions of 47 C.F.R. Sec. 1.6002(1).
- e. Public Works Director will review and may approve a request for deviation to the minimum extent required to address the applicant's needs or facilitate a superior design.