

CITY OF SOMERVILLE
ORDINANCE NUMBER 2019-_____
IN CITY COUNCIL: _____

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

Be it ordained by the City Council of the City of Somerville, in session assembled, that the Code of Ordinances is hereby amended by adding a new Article to Chapter _____, as follows:

Article _____. **Small Wireless Facilities in Public Rights of Way.**

(a) Purpose.

The purpose of this Article is to provide a uniform and comprehensive set of standards for permitting, developing, siting, installing, designing, operating and maintaining small wireless telecommunications facilities (“small wireless facilities”) in the public right-of-way within the City’s jurisdiction.

(b) Definitions.

As used in this Article and in the City of Somerville Design Standards, the following terms shall be defined as follows:

Abandoned -- The cessation of use of a small wireless facility~~-.;~~

Antenna - an apparatus designed for the purpose of emitting radio frequency signals from a fixed location pursuant to the Federal Communications Commission authorization, for the provision of wireless service. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, antenna designed for amateur radio use, or satellite dish for residential or household purposes.

Antenna equipment - 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.

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

Collocate- mount or install an antenna on a structure, or modify a structure for the purpose of mounting or installing an antenna. “Collocation” has a corresponding meaning.

Design Standards – standards promulgated by the Department of Public Works and Planning Department for installation of a small wireless facility, in accordance with applicable FCC rules and regulations, that are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.-

Rights-of-Way or ROW -the area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property, but not including a federal interstate highway.

Small Wireless Facility means a facility that meets each of the following conditions:

- a. The facility (i) is mounted on a structure 50 feet or less in height including the antenna, or (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or (iii) does not extend the existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- b. The antenna, excluding associated antenna equipment, is no more than three cubic feet in volume;
- c. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
- d. The facility does not require antenna structure registration;
- e. The facility is not located on Tribal lands; and
- f. The facility does not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b).

Structure - a pole, tower, base station, or other building, whether not it has an existing antenna facility, that is used or to be used for the provision of wireless service.

Wireless Provider - any individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment and/or small wireless facilities, or provides to the public wireless services using radio frequency signals.

(c) Approval Required.

No wireless provider shall place, construct, erect, modify, mount, attach, operate or maintain a Small Wireless Facility within the City or within any right-of-way in the City without first obtaining approval from the City Council.

(d) Application and Approval Process.

(1) All Small Wireless Facility applications shall be submitted to the City Clerk in accordance with policies and procedures set forth by the City. A public hearing shall not be required unless a new pole is installed. The Small Wireless Facility permit application shall be made by the Wireless Provider or its duly authorized representative.

(2) The City reserves the right to reasonably require, in its sole discretion, a supplemental review by independent experts of any application for a small wireless facility under this section. All reasonable costs of such review shall be borne by the applicant, in addition to scheduled fees. 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 application

(3) No approval granted under this ordinance shall confer any exclusive right, privilege, license, or franchise to occupy or use the public right-of-way for delivery of telecommunications services or any other purpose.

(4) Unless construction has actually begun and is diligently pursued to completion at that point, no permit for construction issued under this Ordinance shall be valid for more than 12 months unless the Mayor and Applicant agree to an extension and all required fees are paid for the term regardless of construction.

(5) Routine maintenance shall not require submittal of a new application, although it shall require all necessary permits for work to be performed.

(6) Any request for modification of an existing wireless tower or base station determined by the Department of Public Works Commissioner to not substantially change the physical dimensions of such tower or base station, as set forth in 47 C.F.R. section 1.40001, may be approved by the Department of Public Works Commissioner in accordance with the Design Standards. The Design Standards shall not apply to the extent that they conflict with the criteria for substantial change as set forth in 47 C.F.R. section 1.4001. Counsel shall be notified by the Department of Public Works when such request is approved. (7) A denial of an application may be based on criteria including but not limited to any of the following:

- (a) inadequate capacity of the pole or mounting structure;
- (b) demonstrative safety issues;
- (c) failure to meet applicable engineering standards;
- (d) failure to meet the Design Standards, unless the applicant can demonstrate that such Design Standards are not technically feasible for that particular installation or that there is no reasonable alternative;
- (e) failure of the applicant to comply with all applicable laws, rules, regulations, or other requirements;
- (f) there is another nearby pole that is a reasonable alternative; and/or
- (g) any other legally valid reason to deny such application.

(8)

(e) Fees and Annual Renewal.

(1) Applications for small wireless facilities shall be accompanied by fees as established by the City Council.

(2) Each year on January 1, the Wireless Provider shall submit an affidavit to the Department of Public Works listing by location, all Installations it owns within the City and certifying which installations remain in use and covered by the applicant's insurance, which installations it has abandoned, and which installations are no longer in use. The Wireless Provider shall at that time pay any necessary payments required by the City. If a Wireless Provider fails to make the payments required by the City, the Wireless Provider's Small Wireless Facilities shall be deemed abandoned and the City may, at its sole option, remove all or any portion of them, or take other action as authorized by law.

(f) Removal, Modification or Abandonment.

(1) No less than 90 days following written notice from the City, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way. If the wireless provider fails to comply with the written notice, the City may perform the work and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

(2) The City retains the right 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. If the City performs work under this section, it may recover the actual and reasonable expenses of doing so from the wireless provider, its successor or assigns.

(3) A wireless provider is required to notify the City of abandonment of any small wireless facility no less than 30 days prior to abandonment. Following receipt of such notice, the City may direct the wireless provider to remove all or any portion of the small wireless facility that the City determines to be in the best interest of the public health, safety and welfare to remove. If the wireless provider fails to notify the City of the abandonment or fails to remove the abandoned facility within 60 days of such notice, the City may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

(4) The wireless provider shall repair all damage to City property caused by the activities of the wireless provider and shall return the City property to its functional equivalence before the damage pursuant to competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within 60 days of such notice, the City may affect those repairs and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

(g) Exception to Applicability.

Nothing in this section shall authorize a wireless provider to locate small wireless facilities on property owned by a private party, property that is not located within the right-of-way, or a privately owned utility pole or wireless support structure within a right-of-way without the consent of the property owner.

(h) Installation Specifications.

All small wireless facilities must be constructed, installed, and operated in accordance with the plans and specifications included in the application or as otherwise approved by the City Council, as well as the Design Standards.

In addition to the Design Standards, all wireless installations must meet the following requirements, unless otherwise prohibited by law:

- (1) No installation shall be placed less than 15 feet from a residence's window, door opening, porch or balcony.
- (2) In Residential Districts, as set forth in the Somerville Zoning Ordinance, the Small Wireless Facility applicant shall use a passive cooling system. In the event that a fan is needed, the Small Wireless Facility applicant shall use a cooling fan with the lowest noise profile commercially available. In any event, no small wireless facility shall emit noise greater than 40 dBA at the property line at any time.

- (3) No installation shall be placed where, in the determination of the City, it would limit the City's ability to plant future street trees based upon any existing City standards or guidelines for planting of street trees.
- (4) Pole-mounted equipment minimum heights to the bottom of the equipment shall be 15 feet above sidewalk elevation.
- (5) Antennas shall be limited to snug-mount, canister-mount, and concealed, and shall be mounted at the top of the pole with a diameter of no more than 6 inches greater than the diameter of the pole. Where conditions do not permit a top mounted antenna, the antenna may be side mounted with a minimum height of 15 feet above sidewalk elevation.

(i) Insurance, Bonds and Indemnification.

- (1) All wireless providers shall maintain at all times insurance with the following minimum coverages: General liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and umbrella insurance in an amount not less than \$5,000,000. The City must be an additionally insured party. All insurance carriers shall carry an A.M. Best rating of "A-" or better. Such insurance shall provide for the waiver by the insurance carrier of any subrogation rights against the City, its agents, servants and employees.
- (2) Upon approval of the application, the wireless provider shall be required to post bond in the amount of \$5,000 for each small wireless facility, each bond to be held and maintained until the removal of the small wireless facility by the wireless provider or by the City as a guarantee to secure the applicant's compliance with all applicable provisions of this ordinance.
- (3) To the fullest extent allowed by law, any wireless 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 wireless 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 wireless 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. Each wireless provider's obligations under this provision shall not terminate with the expiration or termination of its permit, but shall survive it.

(j) Compliance with all applicable laws.

The wireless provider shall comply with all applicable local ordinances, including but not limited to the noise ordinance, as well as the Massachusetts building, plumbing and electrical codes, 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, provisions of the Federal Communications Commission, the Occupational Safety and Health Administration, and any other state or federal agency regulating wireless communications.