

**CHAPTER 435 – GRANT OF LOCATION APPLICATION PROCEDURES AND STANDARDS FOR WIRELESS COMMUNICATION FACILITIES LOCATED IN THE PUBLIC RIGHTS OF WAY**

**§ 435-1 Authority, Scope and Applicability**

The Town Manager, acting by virtue of the authority granted by Chapter **121**, Licensing, Article II of the Code of the Town of Barnstable, hereby adopts and makes these rules and regulations (“Regulations”) governing grant of location application procedures and standards for the construction of Personal Wireless Service Facilities (as defined herein) within the layout of the public ways within the Town of Barnstable.

**§ 435-2 Purpose and Intent**

- A. The purpose of these Regulations is to provide a uniform and comprehensive set of objective procedures and standards to regulate the location, placement, installation, height, appearance, and operation of Personal Wireless Service Facilities in the public rights of way, consistent with the Town Code, applicable state and federal requirements, and changing technology. The Regulations are intended to provide for the appropriate development of Personal Wireless Service Facilities within the public rights of way to meet the needs of residents, business owners and visitors while protecting public health and safety and preventing visual blight and degradation of the community's aesthetic character and scenic vistas.
- B. The Regulations are intended to permit Personal Wireless Service Facilities in the public rights of way that blend with their existing surroundings and do not negatively impact the historic properties, aesthetic character or public health and safety of the community.
- C. The public ways and places in the Town are a uniquely valuable resource, closely linked with the Town’s residential character and natural beauty. Many public ways have been enhanced by the planting and maintenance of public shade trees.
- D. The Town wishes to preserve and protect community safety and aesthetics in its residential neighborhoods and village centers. Many residences have a small amount of setback between the residence and the public ways. Public ways, including sidewalks, must remain accessible and safe under the Americans with Disabilities Act and traffic control standards. The Town has many scenic roadways. It also has historic districts and historic buildings. Aesthetics and compatibility with immediate surroundings are important considerations in reviewing future uses of the public ways.

A competing consideration is the public interest in maximizing the availability of reliable Personal Wireless Services (as defined herein) which are adequate to meet the needs of the Town (including but not limited to public safety communications needs), its residents and businesses.

- E. The proliferation of Personal Wireless Service Facilities in public ways since the passage of the federal Telecommunications Act of 1996, in part due to evolving wireless technology and increased demand for wireless services, has created a significant concern about the effects of such facilities upon the character of residential areas, village centers, scenic roads and historical districts, and the adverse impacts of such facilities upon public safety and the well-being of the Town's residents and other users of the public ways.
- F. The Town wishes to limit noise and vibration levels that may be associated with some types of Personal Wireless Communications Facilities and assure that such facilities comply on a continuing basis with the Federal Communications Commission's ("FCC") regulations concerning radio frequency emissions.
- G. The Town Manager therefore finds it necessary and desirable to provide for reasonable regulation and orderly deployment of Personal Wireless Service Facilities in the public ways. Accordingly, these Regulations providing grant of location application procedures and standards for Personal Wireless Service Facilities located in public ways have been adopted.
- H. These Regulations are not intended to, nor shall they be interpreted or applied to:
  - 1) Prohibit or effectively prohibit any wireless service provider's ability to provide Personal Wireless Services;
  - 2) Prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate wireless communications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;
  - 3) Unreasonably discriminate among providers of functionally equivalent services;
  - 4) Deny any request for authorization to place, construct or modify Personal Wireless Service Facilities on the basis of environmental effects of radio frequency emissions to the extent that such Personal Wireless Service Facilities comply with the FCC's regulations concerning such emissions;
  - 5) Prohibit any collocation or modification that the Town may not deny under federal or state law; or

- 6) Preempt any applicable federal or state law.

These Regulations govern Personal Wireless Service Facilities in the public rights of way and include requirements related to applications, notices, review procedures, development and design standards, conditions, and operation and maintenance requirements. The Town Manager may hold a public hearing or solicit public comment at his or her discretion in order to seek input regarding the adoption of policies, procedures and forms consistent with these Regulations. The Town Manager may update these Regulations in his or her discretion to adjust for new technologies, changes in federal and/or state law, and/or the need to improve the Town's procedures and standards.

### **§ 435-3 Definitions**

The following capitalized terms are defined for the purposes of these Regulations as follows:

#### **ANTENNA STRUCTURE**

Any structure designed to specifically support an antenna, and/or any appurtenance mounted on such a structure or antenna.

#### **APPLICABLE LAW**

Applicable Laws means all controlling applicable federal, state and local statute, regulations, bylaws, policies and administrative rule and orders that have the effect of law as well as all applicable final, non-appealable judicial opinions.

#### **APPLICANT**

Any person or entity, including representatives thereof, submitting an application to install Personal Wireless Service Facilities in the public rights of way.

#### **BATCH APPLICATION**

Multiple separate applications filed at the same time, each for one or more sites, or a single application covering multiple sites.

#### **DISTRIBUTED ANTENNA SYSTEM**

A network of spatially separate antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area.

#### **EXCEPTION**

A grant of relief by the Town from a specific requirement or limitation in these Regulations as part of a decision on a grant of location.

#### **FACILITY**

An antenna facility or a Structure that is used for the provision of Personal Wireless Service, whether such service is provided on a standalone basis or commingled with other wireless communications services.

### **GRANT OF LOCATION**

Approval under G.L. c. 166, §§ 21 and 22 and these Regulations to install Personal Wireless Service Facilities at specific locations on, over or below any public way and to obtain ongoing access to the Personal Wireless Service Facilities.

### **HAZARDOUS PRODUCT**

Any chemical or combination of chemicals which, in any form, is listed by trade name, chemical name, formula or otherwise as a product which is a hazard to public drinking water supplies if concentrations beyond a certain level are achieved therein. ‘Hazardous product’ shall also include any product for which there is any listing, declaration, or announcement in any form issued by the United States Environmental Protection Agency, the Massachusetts Department of Environmental Protection, or by any other government agency having direct or indirect jurisdiction over public water supplies that such product is such a hazard or is a product known as an “emerging contaminant” suspected as being capable of being a carcinogen.

### **MONOPOLE**

A structure taller than forty (40) feet high composed of a single spire, pole or tower used to support antennas or related equipment, the primary purpose of which is to serve as a support structure for Personal Wireless Service Facilities.

### **PERSONAL WIRELESS SERVICES**

Personal Wireless Services means commercial mobile services, unlicensed wireless services and common carrier exchange access services, as set forth in 47 U.S.C. § 332(c)(7)(C)(1).

### **PERSONAL WIRELESS SERVICE FACILITIES**

Facilities for the provision of Personal Wireless Services.

### **PERSONAL WIRELESS SERVICE PROVIDER**

A provider of Personal Wireless Services and, for purposes of these Regulations, a provider of a Distributed Antenna System which is used by a Personal Wireless Service Provider to provide Personal Wireless Services. The inclusion of a provider of a Distributed Antenna System in this definition is not determinative of whether a provider of a Distributed Antenna System provides a service which is functionally equivalent to the service provided by a provider of Personal Wireless Services.

### **SMALL WIRELESS FACILITIES**

As used herein and consistent with 47 CFR section 1.1312(e)(2), Small Wireless Facilities encompass facilities that meet the following conditions:

- 1) The facilities:
  - a. are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR section 1.1320(d), or
  - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - c. 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;
- 2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;
- 3) 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 no more than 28 cubic feet in volume;
- 4) The facilities do not require antenna structure registration under part 17 of 47 CFR;
- 5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- 6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

### **STRAND-MOUNTED ANTENNA**

Small Wireless Facilities in which antennas, cables, lines and radio equipment are mounted directly on an existing aerial cable between two Utility Poles and enclosed in a shroud.

### **STRUCTURE**

For purposes of these regulations, (a) a Utility Pole and (b) any new pole, located in the public right of way, the primary purpose of which is to serve as a support structure for Personal Wireless Service Facilities.

### **TOWER**

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole. Except as otherwise provided for by these Regulations, the requirements for a Tower and associated antenna facilities shall be those required in Chapter 240, Sections 106-109 of the Town Code (the wireless zoning ordinance).

## **TOWN-OWNED INFRASTRUCTURE**

Infrastructure including, but not limited to, utility poles, streetlight poles and traffic signals owned, operated and maintained by the Town and located in a public way.

## **UTILITY POLE**

An upright pole used to support electric cables, telephone cables, telecommunications cables and related facilities owned and maintained by an electric distribution company, incumbent local exchange carrier or provider of cable or telecommunications service, which is regulated by the Massachusetts Department of Public Utilities and/or the Massachusetts Department of Telecommunications and Cable. A Utility Pole is not Town-owned Infrastructure.

### **§ 435-4 Scope of Regulations**

These Regulations govern the permitting of:

- A. Personal Wireless Service Facilities attachments to existing or replacement Utility Poles which are located in the public rights of way and which do not have any pre-existing wireless attachments;
- B. Modifications to existing Personal Wireless Service Facilities attached to existing or replacement Utility Poles which are located in the public rights of way and which do have pre-existing wireless attachments but do not satisfy the requirements for “Eligible Facilities Requests” under 47 U.S.C. §1455 and related Federal Communications Commission (“FCC”) regulations<sup>1</sup>;
- C. Construction of a new pole in a public right of way for the primary purpose of providing Personal Wireless Services; and
- D. Personal Wireless Service Facilities attachments to or modifications to existing Personal Wireless Service Facilities attached to existing Town-owned Infrastructure in the public rights of way; provided, however, that an Applicant seeking to attach to Town-owned

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<sup>1</sup> These Regulations do not apply to the filing and review of “Eligible Facilities Requests”, as defined under 47 U.S.C. §1455 and related FCC regulations, which involve a pole (1) located in a public way and (2) classified as a “base station” under 47 U.S.C. §1455. If an Applicant seeks a permit approval pursuant to 47 U.S.C. §1455 and related FCC regulations, the Applicant must submit a separate application in accordance with separate Town procedures and standards. If no separate procedures for the filing and review of Eligible Facilities Request applications involving a location in the public ways are in effect, an application may be filed in the same manner as an application under these Regulations, and substantive review of such application will be based upon criteria in 47 U.S.C. §1455 and related FCC regulations.

Infrastructure located in a public right of way must obtain a grant of location permit and enter into a revocable license agreement with the Town.

**§ 435-5 Grant of Location Application Procedures**

A. **Eligible Applicants.** Only Applicants who have been granted the right to enter the public rights of way pursuant to state or federal law shall be eligible to construct, install, modify, operate, maintain or deploy Personal Wireless Service Facilities. The Applicant must be a Personal Wireless Service Provider or a carrier neutral infrastructure provider of service to a Personal Wireless Service Provider such as, but not limited to, a Distributed Antenna System operator.

To establish eligibility, the Applicant shall demonstrate and provide sufficient evidence of the following:

- 1) That it is qualified and eligible under G.L. c. 166 to place its facilities on Utility Poles located in the public rights of way, construct a Structure, or attach to Town-Owned Infrastructure through the provision of:
  - a. A Statement of Business Operations filed with the Massachusetts Department of Telecommunications and Cable, if any, and a link to existing tariffs, if any; or
  - b. A copy of any current FCC license or other authorization covering the provision of Personal Wireless Services by the Applicant using Personal Wireless Service Facilities within the Town.
- 2) Evidence of its authority to conduct in the Commonwealth of Massachusetts the business to be carried out through the proposed Personal Wireless Service, such as a certificate from the Commonwealth of Massachusetts Secretary of State.
- 3) Carrier-neutral Applicants such as, but not limited to, Distributed Antenna System operators shall also (1) provide satisfactory evidence that they have a contract with at least one Personal Wireless Service Provider which will make use of the proposed facilities as part of the application materials or (2) accept as a grant of location condition that they shall not commence construction of their facilities until such time as they have notified the Town that they have executed such a contract, such notice to be provided within six (6) months of the issuance of a grant of location. Failure to satisfy this filing requirement shall render the application incomplete and be grounds for denial of the application.

B. **Speculative Construction.** The Town shall not approve an application when the Applicant has stated that it does not intend to install Personal Wireless Service Facilities within six (6) months of receipt of a grant of location.

C. **Application Filing Requirements**

1) Applications for a grant of location shall be made on forms prescribed by and available from the Town Manager in accordance with the Town Manager's instructions.

2) Exceptions. These Regulations are subject to applicable state and federal law. A limited exception from a requirement under these Regulations may be warranted where strict compliance with these Regulations would (1) conflict with state or federal law, or (2) impose, if so determined by the Town, an unnecessary or unduly burdensome requirement on the Applicant, taking into account benefits to the Town from enforcing the requirement and the existence of a reasonable alternative.

3) If the Applicant intends to seek an Exception from any Town Personal Wireless Service Facilities grant of location requirement(s) which regulate the placement, construction and modification of Personal Wireless Service Facilities on the grounds that it would: (1) prohibit or have the effect of prohibiting the provision of Personal Wireless Services; (2) unreasonably discriminate among providers of functionally equivalent services; or (3) otherwise conflict with federal law, the Applicant shall submit a detailed written explanation and supporting information in its application. The Applicant also may request an Exception to any condition recommended in a Town department report following that department's review of the application. The Town Manager or designee will determine whether to grant such an Exception and provide a written statement of reasons regarding its determination. Unless an Exception has been granted, all applications shall include all of the forms, information, materials and documentation required by the Town.

D. **Pole Owner Permission to Attach to Utility Pole.** The Applicant shall submit evidence of pole owner permission to attach its Personal Wireless Service Facilities to the specific Utility Pole(s) (e.g., with specific pole numbers) included in its application (if any). If such evidence is not currently available, as a condition of any grant of location, the Applicant shall provide, prior to the Applicant's commencement of construction of the Personal Wireless Service Facilities, written evidence of such permission. A letter from the pole owner which certifies that it has granted the



Applicant a location-specific license for the proposed location and identifies the pole number of such location will constitute evidence of permission.

**E. Other Permits Needed in Order to Construct**

- 1) Applicants are responsible for obtaining any additional permits which are needed in order to construct and operate the proposed Personal Wireless Service Facilities. Such permits may include, but are not limited to, building permits, electrical permits, street opening permits and historic district commission certificates. Separate application fees apply to each permit.
- 2) Other permits needed in order to construct the proposed Personal Wireless Service Facilities will be subject to review within intervals established by the FCC, such intervals to commence when a specific permit application is made for each of these other permits.
- 3) If the proposed location is within an historic district of the Town, and if the Applicant is required to obtain, but has not received, from an historic district commission and submitted with its Application an appropriate certificate and statement that all appeal periods have expired, the Applicant shall accept as a condition of a grant of location that it shall not construct the proposed Personal Wireless Service Facilities until after it has received a certificate issued by the historic district commission which is final and not subject to appeal and has filed such certificate with the Town. If no such permission from an historic district commission is required, this requirement shall not apply to the grant of location application.

**F. Copies of Application.** Two complete applications shall be filed with and date stamped by the Town Clerk.

**G. Application and Recurring Annual Fees.** The fees for a grant of location application shall be initially set at \$500 for a single application for 1-5 Small Wireless Facilities; \$100 for each additional Small Wireless Facility; and \$1,000 for a new pole application. An annual recurring fee per Small Wireless Facility shall be \$270. Thereafter these fees may be modified by the Town Manager at a fee hearing. The same fee structure shall apply to grant of location applications for Personal Wireless Service Facilities that do not qualify as Small Wireless Facilities.

**H. Peer Review.** In accordance with G.L. c. 44, § 53G, the Town Manager or designee shall determine whether a peer review of an application is needed in order to enable the

Town Manager or designee to fully and timely evaluate the technical aspects of the application, including but not limited to: accuracy, adequacy and completeness of submissions; compliance with applicable radio frequency emissions standards; whether any requested exception is necessary; technical demonstration of the facility designs or configurations; technical feasibility; coverage analysis; the validity of conclusions reached or claims made by the Applicant; and any other factors deemed appropriate by the Town Manager or designee to effectuate the purposes of these Regulations. A peer review may be required to enable the timely review of a Batch Application. A peer review shall be conducted by a consultant or consultants selected by the Town Manager or designee at the Applicant's expense, for the reasonable costs incurred by the Town. The Applicant shall be entitled to seek administrative review of the selection of such consultant or consultants by filing an appeal with the Town Council; provided that the grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. Any such administrative review shall be subject to the provisions of G.L. c. 44, § 53G.

## **I. Initial Review of Application**

### **1) Incomplete Applications**

The Town Manager or designee will follow procedural requirements for incomplete applications and any continued incompleteness established by the FCC in its orders regarding applications to locate Personal Wireless Service Facilities in the public ways, subject to 47 U.S.C. §332(c)(7)(B) and FCC orders, including specific requirements that apply in the case of Small Wireless Facilities.

Formal notice of initial incompleteness shall be given to the Applicant by the Town Manager or designee as soon as possible, and in all cases within ten (10) calendar days of the commencement of the shot clock interval, as set forth in subsection (J) hereof, where the Application covers Small Wireless Facilities and otherwise within thirty (30) calendar days of the commencement of the shot clock interval, and will specifically identify: (1) all missing documents and information; and (2) the code provision, regulation, form requirement, application instruction or otherwise publicly stated guideline that requires the documents and information to be submitted.

If such notice is not provided to the Applicant within such applicable period, the Town shall not toll the running of a shot clock interval based upon the incompleteness of the application. However, an Applicant remains responsible for submitting a complete application and bears the risk of a denial of its

application based upon incompleteness of its application even if no timely notice of incompleteness was provided.

Any application deemed incomplete pursuant to the above procedures must be made complete within one hundred eighty (180) calendar days after the issuance of the notice of incompleteness or the application shall be deemed to be automatically withdrawn. No application fees or peer review fees for reasonable costs incurred by the Town shall be refunded for withdrawn applications.

In the case of a Batch Application, a notice of incompleteness may apply to fewer than the total number of locations included in the batch. In this instance, each location which is not subject to a notice of incompleteness will be processed in accordance with the applicable shot clock interval.

- 2) **Complete Application or No Notice of Incompleteness.** If the Application is found to be complete or if no notice of incompleteness has been issued, the Town Manager or designee shall provide a written report with recommendations within thirty (30) calendar days of the application filing date. The recommendations shall include findings or use of a checklist showing whether the application complies with the standards governing the application.

- J. **Shot Clocks.** The shot clock date interval is determined by counting forward beginning on the day after the date when the application is date stamped by the Town Clerk, by the number of days of the shot clock period identified below; provided, that if the shot clock interval calculated in this manner is a holiday, the shot clock interval will end on the next business day after such date. The term “holiday” means any of the following: Saturday, Sunday, and any holiday recognized by the Town and any day the Town is closed for business. The term “business day” means any day that is not a holiday, as defined herein. The shot clock interval may be reset or tolled by mutual agreement or upon the Town’s issuance of a notice of incompleteness as provided under these Regulations and applicable federal law.

For an application to attach Small Wireless Facilities to an existing Utility Pole, the Town will act upon the application within sixty (60) calendar days of its receipt of a complete application and application fee, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the application.

For an application to deploy Small Wireless Facilities using a new Utility Pole, a replacement pole or other new Structure, the Town will act upon the application within ninety (90) calendar days of its receipt of a written application and application fee,

unless the time period is reset or tolled by mutual agreement or due to incompleteness of the Application.

In the case of a Batch Application, the Town will act upon each location based on whether all of the locations in the batch are of a same type and would be governed by a sixty (60) calendar day shot clock or ninety (90) calendar day shot clock if filed separately. If the batch includes proposed locations that would be subject to different shot clocks, the ninety (90) calendar day shot clock interval shall apply to the entire batch.

For an application to attach Personal Wireless Service Facilities which are not Small Wireless Facilities, the Town will act upon the Application within ninety (90) calendar days of its receipt of a complete application and application fee, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the application.

For an application to deploy Personal Wireless Service Facilities which are not Small Wireless Facilities and are using a new Structure, the Town will act upon the Application within one hundred fifty (150) calendar days of its receipt of a written application and application fee, unless the time period is reset or tolled by mutual agreement or due to incompleteness of the application.

In the case of an attachment to Town-owned Infrastructure that requires a pole to be replaced in order to safely accommodate the attachment, the shot clock interval will be ninety (90) days in the case of attachments which are Small Wireless Facilities and one hundred fifty (150) days in the case of attachments which are not Small Wireless Facilities.

- K. **Modification or Supplementation of Application.** For an application which has not been found to be incomplete, the Applicant shall disclose at least forty-eight (48) hours prior to a public hearing any modification(s) of or supplementation to its proposal. If the Town determines that such proposed modification or supplementation is so substantial that the public notice of the application is inadequate, submission of a new grant of location application shall be required. Applications that are found to be incomplete must be supplemented as described above.
  
- L. **Public Hearing.** The Town Manager or designee will conduct a public hearing on the application, subject to public notice requirements and requirements for direct notice to abutters under G.L. c. 166, § 22. The Town Manager shall supplement statutory notice requirements by (1) mailing notice of the public hearing to property owners within 300 feet of the proposed location; (2) posting a notice of public hearing on the Town website and at Town Hall; and (3) establishing a method enabling interested persons to sign up

for and receive email notices of grant of location applications filed by Personal Wireless Service Providers and infrastructure providers (including but not limited to carrier neutral applicants serving Personal Wireless Service Providers, including but not limited to, DAS providers). Applications will be made available for public inspection and may be posted on the Town website.

Any materials to be submitted by a Town peer reviewer shall be filed with the Town Manager or designee and provided to the Applicant at least forty-eight (48) hours prior to the public hearing.

- M. **Written Decision and Statement of Reasons.** The Town Manager or designee shall issue a written decision together with a statement of reasons for granting, denying or granting with conditions the application, based upon the public hearing record.
- N. **Appeals.** Any appeals from a final decision by the Town Manager or designee shall be governed by applicable law.
- O. **Acceptance of Grant of Location Order with Conditions.** Grants of location must be accepted by the Applicant as required under G.L. c. 166, § 22. The Applicant shall pay the fee for recording the grant of location order as required under the Town Code, and G.L. c. 166, §22, and G.L. c. 262, §34, clause 62. As of the effective date of these regulations, the statutory recording fee is \$3.50 for each street or way included in the Grant of Location order.
- P. **Additional Grant of Location Approval Required; Activity that Does Not Require Additional Grant of Location Approval.** Any increase in the height, number or dimensions of Personal Wireless Service Facilities components after construction shall be subject to Town approval in accordance with applicable law.

No Town approval is required for renewing, repairing or replacing the Personal Wireless Service Facilities as long as they do not increase the height, number or dimensions of the existing Personal Wireless Service Facilities or decrease ground clearance below the minimum allowed. The Town Manager or designee, at the request of the Applicant, may determine in writing that a *de minimus* increase does not require further approval.

In the event that, after a grant of location order and before construction, the position of a Personal Wireless Service Facilities component needs or is required to be moved, the Applicant shall submit any revisions to its plans to the Director of Public Works, the applicable Fire Chief and the Building Commissioner, who shall each submit written comments to the Town Manager or designee who may authorize the change so long as

the change does not reduce ground clearance below the minimum allowed, or increase the height, dimensions or number of the Personal Wireless Service Facilities by more than a *de minimus* amount (as determined by the Town) or violate applicable Town requirements.

No Structure shall be removed or replaced without the written approval of the Building Commissioner.

- Q. **New Poles.** Applications for the construction or installation of new poles are discouraged. Existing Utility Poles or replacement poles at existing locations should be utilized where available. Any new pole proposed for Personal Wireless Services use in excess of forty (40) feet from ground level shall be considered a Monopole and prohibited in the public rights of way unless an Exception is granted by the Town. An Applicant proposing to construct or install a new pole for wireless communications use must demonstrate that (1) attachment to an existing Utility Pole or replacement Utility Pole at its existing location is not a technically feasible alternative; (2) denial of the proposed location would effectively prohibit its provision of Personal Wireless Services; or (3) another ground for granting an Exception applies.
  
- R. **Strand-Mounted Antenna.** Strand-Mounted Antenna, as defined herein, are subject to these Grant of Location Regulations.

#### § 435-6 Standards for Grants of Location for Wireless Communications Facilities

- A. **Purpose.** These Standards provide objective, uniform criteria for the review of grant of location applications for the placement of Personal Wireless Service Facilities in the public rights of way: (1) by attachment to a Utility Pole that has no pre-existing wireless attachments; (2) by attachment to a Utility Pole that has pre-existing wireless attachments where the application does not qualify or has not been submitted for review under 47 U.S.C, 1455 and related FCC regulations; (3) by attachment to a new pole constructed for communications uses; and (4) by attachments to Town-owned infrastructure, such as streetlight poles, located within the public rights of way. In order to ensure compatibility with surrounding land uses, protect public safety and natural, cultural, and scenic resources, preserve and enhance the character of residential neighborhoods and promote attractive nonresidential areas, Personal Wireless Service Facilities in the public rights of way shall comply with all applicable requirements of these Regulations and be located, developed and operated in compliance with the Standards set forth below in Subsection B and Subsection C Standard Conditions. A Grant of Location does not authorize the provision of cable television service or any other service which requires a separate federal, state or local franchise, license or permit.

## B. Standards

- 1) **Avoidance of Adverse Impacts and Obstructions.**
  - a) Personal Wireless Service Facilities that are located within the public rights of way shall be designed and maintained so as to (i) minimize visual clutter and reduce noise and other adverse impacts on the surrounding community and (ii) avoid any obstruction of the use of the public rights of way, including sidewalks.
  - b) Each component part of the proposed Personal Wireless Service Facilities shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the public right of way, safety hazards to pedestrians and motorists, interference with the use of driveways, or interference with any path of travel or other disability requirement imposed under federal or state law.
  - c) All Personal Wireless Service Facilities shall be designed and located in such manner as to avoid adverse impacts on pedestrian and traffic safety, and shall comply with traffic control laws, ordinances, rules, regulations and codes of the Town and the State. The grantee of a Grant of Location ("Grantee") shall employ Personal Wireless Service Facilities that comply with any noise ordinance or other reasonable noise level requirement of the Town as is technically feasible and commercially practicable in light of industry standards and equipment specifications. In the event that its facilities fail to comply with such ordinance or requirement, the Grantee shall immediately take all steps necessary to correct such non-compliance, including providing such equipment that is reasonably necessary to bring the facilities into compliance with such ordinance or requirement. The Grantee shall promptly shut down and repair any equipment that is not in compliance.
- 2) **Use of Smallest Technically Feasible Amount of Space.** Personal Wireless Service Facilities shall be designed to occupy the least amount of space in the public right of way that is technically feasible.
- 3) **Preferred Use of Existing Poles.** The preferred location for Personal Wireless

Service Facilities shall be on existing Utility Poles, substantially similar replacement poles or Town-owned Infrastructure. If the Personal Wireless Service Facilities cannot be placed on existing Utility Poles, substantially similar replacement poles or Town-owned Infrastructure, the Applicant shall provide an explanation why such placement was not available and a map of existing Utility Poles and Town-owned Infrastructure in the vicinity of the proposed location and describe why each site was not technically feasible or otherwise unavailable.

4) **Preferred and Sensitive Locations.**

- a) Preferred Zoning Locations. The order of preference for the location of Personal Wireless Service Facilities in the public ways, from most preferred to least preferred, as classified in Chapter 240 Zoning, Article II, Section 5, is: (a) Industrial Districts; (b) Commercial, Office, and Downtown Hyannis Districts; (c) Residential Districts.
- b) Based on aesthetic considerations, Applicants are encouraged to avoid pole locations that would be: (a) directly in front of and on the same side of the public way as a residential dwelling; (b) on a scenic road; (c) directly in front of and on the same side of the public way as an historic building listed in the Massachusetts Historic Register; (d) at an entry point to a village center (if so defined by the Planning Department in design guidelines); or (e) within an existing underground utility district established pursuant to G.L. c. 166, §§ 22A-22N.
- c) The proposed location of a new pole shall be set back from a residential dwelling by a distance of at least a fall zone and up to 100 feet. If the proposed pole location is directly in front of a residential dwelling, the Applicant shall submit as part of its application a documented evaluation of alternative locations which are not directly in front of a residential dwelling and any other residential dwelling and whether such alternative locations are technically feasible to meet the service objectives of the proposed location. The Applicant shall explain and document whether any alternative pole location evaluated is unavailable based upon a pole owner determination in accordance with pole attachment license agreement terms and conditions or technically infeasible due to distance, line of sight or other factors. Such evaluation shall be supported by factual studies, documents, reports and other information (which may include propagation



maps and drive test results) and an explanation of the criteria applied to determine whether an alternative location is technically feasible. The Town Manager will consider recommendations of the Planning Department regarding the proposed and any alternative location(s). The Town Manager may consider the availability of an alternative location which is not directly in front of a residence and which is set further back from the residence than the proposed location.

- d) Personal Wireless Service Facilities of a Grantee shall be spaced at least 300 feet apart; provided, however, an applicant may propose a modification to this spacing standard based on technical considerations.
  
- 5) **Underground Utility Districts.** New Poles shall not be installed for wireless communications purposes in locations where cable, electric or telecommunications facilities are located underground in an existing underground utility district established pursuant to G.L. c. 166, §§ 22A-22N. If there is an existing Town-owned streetlight pole in such a location, a party wishing to attach Personal Service Communications Facilities to such a pole must obtain a license agreement or other required permission from the Town in addition to a grant of location pursuant to these regulations. An Applicant seeking an Exception from these requirements must submit with its request (a) factual information (which may include photographs and mock-ups) which addresses whether the proposed facilities at the proposed location are incompatible with the existing proposed location and would defeat the purpose for establishing such underground district; and (b) the factual basis for any assertion that the requirements under this section would prohibit or effectively prohibit the provision of Personal Wireless Service.
  
- 6) **Electric Power Meters.** The Applicant shall state whether the use of an electric power meter is required by the electric distribution company's tariff or if a non-metered rate is available under such tariffs. If a non-metered rate is available, the Applicant shall utilize a non-metered rate in order to reduce visual clutter, the risk of vandalism and the weight borne by the Utility Pole. The Applicant is not required to request a non-metered rate which is not tariffed and which would require entering into a special contract with the electric distribution company subject to approval by the Massachusetts Department of Public Utilities.
  
- 7) **Radio Frequency Emissions; Power Densities**

- a) In accordance with federal law, the Town shall not regulate the placement, construction, and modification of Personal Wireless Service Facilities on the basis of the environmental effects of radio frequency emissions (“RFE”) to the extent that such facilities comply with the FCC’s regulations concerning such emissions. As part of its application, the Applicant shall provide: (1) a certification by a qualified radio frequency engineer that the proposed facility will comply with such regulations; and (2) a copy of its RFE compliance and safety practices, including any ongoing review of compliance with the FCC’s RFE regulations.
  
- b) A Grantee shall submit within ninety (90) days after beginning operations under a Grant of Location a technically sufficient monitoring report that demonstrates whether its Personal Wireless Service Facilities are in compliance with the FCC’s RFE regulations. Thereafter, annual RFE monitoring is required for all sites by an independent radio frequency engineer to be hired by the Grantee at the Grantee’s expense. Test results will be submitted to the Town Building Commissioner as soon as available, but not later than the close of the calendar year. Annual testing of RFE shall be required to ensure continual compliance with the FCC RFE regulations, including aggregate emissions requirements. In the event that the Grantee discovers, during annual testing or at any other time, that FCC RFE limits are exceeded, the Grantee shall bring the Personal Wireless Service Facilities into compliance as soon as practicable, but in no case later than thirty (30) days after receipt of the above test results, and certify such compliance to the Town, or, at Grantee’s election, Grantee shall shut down the operation of the Personal Wireless Service Facilities within thirty (30) days of receipt of such test results. The failure to comply with these requirements shall result in the termination or modification of the Grant of Location.
  
- c) In addition, for each Personal Wireless Service Facilities location, the Town shall have the right, but not the obligation, to employ a qualified independent radio frequency engineer to conduct random and unannounced tests of the Grantee’s Personal Wireless Service Facilities installations located within the Town to certify their compliance with all FCC RFE regulations as they apply to exposure of the general public.

The cost of such tests shall be paid by the Town, provided that if any such test establishes that the Personal Wireless Service Facilities are not in compliance with such FCC RFE regulations, the Town shall provide the test results to the Grantee, and Grantee shall pay the costs of such test. In the event that FCC RFE limits are exceeded, the Grantee shall bring the Personal Wireless Service Facilities into compliance as soon as practicable, but in no case later than thirty (30) days after receipt of such test results, and certify such compliance to the Town, or, at Grantee's election, Grantee shall shut down the operation of the Personal Wireless Service Facilities within thirty (30) days of receipt of such test results. The failure to comply with these requirements shall result in the termination or modification of the grant of location.

- 8) **Back-up Generators and Air Conditioning.** Personal Wireless Service Facilities, including backup generators and air conditioning units, shall not generate continuous noise in excess of 40 decibels (dBA) measured at the property line of any adjacent residential property, and shall not generate continuous noise in excess of 50 dBA during the hours of 7:00 a.m. to 10:00 p.m. and 40 dBA during the hours of 10:00 p.m. to 7:00 a.m. measured at the property line of any nonresidential adjacent property. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
- 9) **Maintenance of Personal Wireless Service Facilities.** All equipment and other improvements to be constructed, installed, operated and maintained shall be maintained in a manner that is not detrimental or injurious to public health and safety and general welfare and in a manner that ensures that the aesthetic appearance of Personal Wireless Service Facilities is continuously preserved and substantially the same as shown in the approved plans. The Town shall have the right, but not the obligation, to periodically inspect the installed Personal Wireless Service Facilities and may include the reasonable cost of such inspections in publicly established annual recurring charges applicable to such facilities.
- 10) **Planning Department Design Guidelines.** The Planning Department may provide Design Guidelines for the location and composition of Personal Wireless Service Facilities which should be considered in preparing and reviewing Applications. The Design Guidelines shall be consistent with these Regulations and may include details, descriptions and examples of acceptable

designs for Wireless Communications Facilities, visual depictions, the location of components, and acceptable coloring and other acceptable concealment elements (as defined by federal law). In the event of any conflict between the Design Guidelines and these Regulations, these Regulations take precedence over the Design Guidelines. The Design Guidelines shall be advisory in nature.

- 11) **Stealth Elements.** Examples of stealth elements are included in these regulations and are required in order to limit any adverse visual impact and incompatibility of the proposed facilities in the area where the pole location is proposed. Examples of stealth elements are in Section 435-6(B)(19) and include, but are not limited to: (a) radio frequency transparent screening; (b) approved specific colors; (c) minimizing the size of the facilities; (d) integrating the installation into existing utility infrastructure; (e) installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and (f) measures which conceal Personal Wireless Service Facilities or make them appear like something other than such facilities. Stealth elements are distinguished from concealment elements, as that term has been interpreted by the FCC as measures that make the Personal Wireless Service Facilities appear like something other than such facilities. Stealth elements are intended to promote the public interest in minimizing the visual impacts of Personal Wireless Service Facilities and their incompatibility in the area in which they are proposed.

12) **Strand-Mounted Antenna**

- a) Strand-mounted antenna shall only be located between two utility poles on a strand that is parallel to the ground and the edge of the public right of way. Only one strand-mounted antenna shall be allowed in each span.
- b) Strand-mounted antenna shall not be located on any strand between two utility poles that crosses the public right of way.
- c) All strand-mounted antenna shall be located entirely within the limits of the public right of way.
- d) Strand-mounted antenna shall be placed as close as possible to the nearest utility pole, and in no event more than five (5) feet from the pole, subject to any requirements of the utility pole owner for safety clearance.
- e) Each strand-mounted antenna shall not exceed a maximum volume of

three (3) cubic feet comprised of radio, antenna and supplementary equipment, but excluding mounts and connectors. No strand-mounted component shall exceed eighteen (18) inches in diameter, and no portion shall extend greater than a distance of twelve (12) inches measured from the strand on which it is mounted.

- f) An Applicant must demonstrate that the supporting poles are appropriately sized and have sufficient structural strength to accommodate the additional material load per the National Electrical Safety Code.
- g) An Applicant must demonstrate that the proposed location does not involve a double pole or a pole scheduled to be replaced within twelve (12) months.
- h) Strand-mounted antenna shall not be installed directly below pole-mounted streetlight fixtures.
- i) Electric service for all strand-mounted antenna shall be fed from a pole-mounted power supply.
- j) All new installations, upgrades, or modifications of strand-mounted antenna capable of any radio frequency emission shall comply with radio frequency regulations of the FCC.
- k) All conductive parts of the strand-mounted antenna assembly shall be bonded together and grounded to the pole ground.
- l) Strand-mounted antenna shall be installed with good workmanship and shall not interfere with climbing and maintenance of the Utility Poles.
- m) A service disconnect switch shall be installed for all power supplies for the purpose of powering the equipment.
- n) Each strand-mounted antenna shall be tagged with an antenna ownership identification tag, RF Notice tag and RF Caution tag.
- o) Clearances shall comply with the National Electrical Safety Code and utility pole owner requirements.
- p) The Town shall have the right, but not the obligation, to inspect strand-

mounted antenna and may include such inspection as part of any annual inspection of the Grantee's facilities located in the public ways pursuant to a grant of location.

- q) Strand-mounted antenna shall be compatible with the color requirements under Subsection 19(e) of this Section B of these Regulations.
- 13) **Number Limitation.** Unless otherwise authorized by the Town for good cause shown, only one (1) personal wireless service provider or carrier neutral infrastructure provider such as a DAS operator, shall be allowed to own, attach and/or operate Personal Wireless Service Facilities or carrier neutral facilities which are attached to a single Utility Pole or strand-mounted. This provision does not prohibit a carrier neutral DAS host from allowing one or more wireless service providers to use its facilities. The owners or operators of the attachments are jointly responsible for compliance with the FCC's aggregate radio frequency emissions regulations and are required to demonstrate that their facilities will be in compliance and are in actual compliance within thirty (30) days after the construction of the additional attachment to the Structure.
- 14) **Multiple Antennas.** If any multiple antennas are proposed to be attached to a single Structure, the Town may limit the number of antennas and related equipment so attached in order to prevent negative visual impacts and protect the safety of the public.
- 15) **Town-owned Infrastructure.** Attachment to Town-owned Infrastructure in the public right of way shall require, in addition to a grant of location, a license agreement with the Town.
- 16) **Replacement Poles.** If an application requires replacement of an existing Utility Pole to accommodate proposed Personal Wireless Service Facilities, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible (taking into account pole owner control of its Utility Poles). Any licensing of the use of a pole which is Town-owned Infrastructure will require the replacement of the existing Town-owned pole and such other specifications as determined by the Director of Public Works. These specifications will be part of the license agreement between the Applicant and the Town.
- 17) **New Monopoles or Poles.** Subject to Exceptions under these Standards, no new Monopole or Utility Pole whose primary purpose is to support Personal Wireless Service Facilities shall be installed within the public ways of the Town unless authorized by the Town. Only pole mounted antennas and strand

mounted antennas shall be permitted in the public rights of way. Towers are prohibited in the public rights of way. An Exception shall be required to place a new pole that is not a replacement for an existing pole in the public right of way. If an Exception is granted for placement of a new pole in the public right of way:

- a) To the maximum extent feasible (taking into account ownership of the new pole), the new pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.
  - b) Such new poles shall be subject to a height limitation of forty (40) feet unless a taller height is permitted by the Town.
  - c) A new pole justification analysis shall be submitted to demonstrate why (1) existing Utility Poles or locations outside of the public rights of way cannot be utilized; and (2) the new pole is the least intrusive means possible, including a demonstration that the new pole is designed to be the minimum functional height and width required to support the proposed Personal Wireless Service Facilities.
  - d) For all wooden poles, conduit and cables attached to the exterior of poles shall be mounted flush thereto.
  - e) A new pole shall not require the replacement of adjacent poles or require the rearrangement of existing facilities of the pole owner, the Town or another entity attaching to adjacent poles.
- 18) **Americans with Disabilities Act Requirements.** All Personal Wireless Service Facilities shall comply with Americans with Disabilities Act (ADA) standards and requirements, including but not limited to sidewalk access and clearance requirements. The Applicant shall demonstrate in its application that the proposed construction meets ADA requirements when in the public rights of way.
- 19) **Attachment to Structures; Limitations.** No Personal Wireless Service Facilities or Small Wireless Facilities shall be attached to a Structure unless all of the following conditions are satisfied:
- a) **Surface Area of Antenna.** In general, the personal wireless service antenna, including antenna panels, whip antennas or dish-shaped

antennas, shall be as small as practicable, taking into account aesthetic and public safety considerations.

- b) **Size of Above Ground Personal Wireless Service Facilities.** The total combined volume of all above ground equipment and appurtenances serving a personal wireless service antenna shall be as small as practicable, taking into account aesthetic and public safety considerations.
- c) **Lowest Point Above Grade.** The operator of Personal Wireless Service Facilities or Small Wireless Facilities shall, whenever possible, locate the base of the equipment or appurtenances at a height of no lower than eight (8) feet above grade. No facilities may be installed at grade without the approval of the Director of Public Works and the Town.
- d) **Height.** The top of the highest point of the Utility Pole shall not exceed forty (40) feet above ground level and the combination of the height of the utility pole and personal wireless service antenna extension shall not exceed forty-four (44) feet above ground level.
- e) **Color.** To the maximum extent practicable, the color of the Personal Wireless Service Facilities shall be similar to and blend with (a) the existing equipment on the Utility Pole and/or on other nearby Utility Poles; (b) the color of the Utility Pole; or (c) another color reasonably satisfactory to and directed by the Town. The Personal Wireless Service Facilities shall have non-reflective materials. Any applicable Planning Department design guidelines shall be taken into account in applying these criteria.
- f) **Shielding of Wiring.** Any wiring on the pole must be covered with an appropriate cover or cable shield.
- g) **Mounting.** Antenna elements and equipment shall be mounted as close to the surface of the pole as practical and feasible.
- h) **Antenna Panel Covering.** Personal Wireless Service Facilities antenna shall include a radome, cap or other antenna panel covering or shield and shall use a color that blends with the color of the utility pole on which it is mounted.



- i) **Signage.** Other than signs required by federal or state law, Personal Wireless Service Facilities shall not have signs installed thereon. Identification tags may be utilized in accordance with governmental and/or pole owner requirements.
- j) **Wiring and Cabling.** Wires and cables connecting the antenna and/or appurtenances shall be installed in accordance with the National Electrical Safety Code, any other applicable codes in force at the time of installation of the wires and cables, and any stricter standards required by a pole owner.
- k) **Grounding.** The Personal Wireless Service Facilities shall be grounded in accordance with the National Electrical Safety Code in force at the time of installation of the wires and cables or any stricter standard required by a pole owner.
- l) **Guy Wires.** No guy wires or other support wires shall be used in connection with Personal Wireless Service Facilities unless the facilities are proposed to be attached to an existing Utility Pole that incorporates guy wires prior to the date that the applicant has applied for a grant of location, or unless the use of guy wires or support wires allows for an installation that furthers the objectives of these procedures and standards better than other practical alternatives that do not include the use of such wires. Guy wires shall not interfere with the use of a driveway or the use of sidewalks.
- m) **Wind Loads.** The proposed Personal Wireless Service Facilities shall be properly engineered to withstand wind loads required by applicable safety codes and pole owner requirements. This requirement may be satisfied if the Applicant provides with its application, or pursuant to a condition of approval, a certificate of compliance with applicable safety codes and pole owner requirements from the pole owner, including a structural engineering certification provided by a Massachusetts licensed engineer.
- n) **Obstructions.** Each component part of the Personal Wireless Service Facilities shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, cause safety hazards to pedestrians and motorists or otherwise interfere with the public's use of the public right of way. Nor shall any such component obstruct intersection visibility. The Personal Wireless Service Facilities shall not

interfere with access to or operation of a streetlight, fire alarm cable, municipal fiber optic facilities, fire hydrant, fire alarm, fire station, fire escape, water valves and facilities, sewer facilities, underground vault, valve housing structure, or any other public health or safety facility. The Personal Wireless Service Facilities shall not interfere with snow plowing, sidewalk clearing, leaf removal or the maintenance of public shade trees. The maintenance of the Personal Wireless Service Facilities shall not cause any such obstructions.

- o) **Traffic Safety.** All Personal Wireless Service Facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic and pedestrian safety. Personal Wireless Service Facilities shall not project over the public right of way or sidewalk (beyond the curb) in such a manner and at a height that will interfere with the public use of the public right of way or sidewalk. The Applicant shall comply with the Uniform Traffic Manual for Traffic Control at all times during construction or installation.
- p) **Lighting.** The Grantee's Personal Wireless Service Facilities shall not produce any lighting or blinking light that is not required by federal or state law, unless otherwise permitted by the Town.
- q) **Security.** Each installation shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The Applicant shall provide its written security standards and practices and a written explanation of its standards and practices to ensure adequate security for its Personal Wireless Service Facilities in accordance with current industry practices and any applicable standards.
- r) **Vibration.** The Applicant shall demonstrate that it is capable of promptly shutting down and repairing any equipment that vibrates excessively.
- s) **Drip Lines of Trees.** The Town discourages the installation of Personal Wireless Service Facilities within the dripline of a Public Shade Tree or other Town-owned tree. If there is no alternative to the installation of such facilities within the dripline of a Public Shade Tree or other Town-owned tree the installing party must comply with G.L. c. 87, and/or the Town Trees ordinance in Chapter 221 of the Town Code and obtain a

Tree Permit from the Tree Warden. The Town will not permit the pruning, cutting, or damage to a Public Shade Tree or other Town-owned tree to facilitate the installation of Personal Wireless Service Facilities unless approved by the Tree Warden.

- t) **Non-interference with other Users of Utility Pole or Other Existing Structure.** The Grantee and its facilities shall not interfere with the operation and maintenance of any wires, cables or equipment already attached to a Utility Pole or other existing Structure, including but not limited to streetlights and cable, electrical and telecommunications facilities (including any Town communications facilities such as fiber optic cables and copper alarm transmission lines). Signage already attached to a pole shall not be moved without the prior written consent of the Town department that controls the placement of the signage.
  
- u) **Fire Safety Measures and Requirements.** The Applicant shall include in its Application a written explanation of all fire safety measures that it will implement. Such measures may include, but are not limited to, (i) readily accessible automatic or other means of shut off of electric power to the Personal Wireless Service Facilities, (ii) surge protection for lightning discharge or other significant electrical disturbance, (iii) signage as required by grant of location conditions, the National Electrical Code, FCC regulations and/or pole owners, (iv) instructions for first responders to de-energize equipment, (v) the training of employees and contractors, (vi) the provision of information as may be requested by the applicable Fire Chief or designee, the provision of emergency information to the applicable Fire Chief or designee, (vii) proof of compliance with all applicable fire codes and pole owner requirements related to fire safety, (viii) and the use of setbacks from buildings. The Applicant shall address whether the risks of damages from a fire would be reduced if its facilities were located farther from the nearest residence or building and if such other location is available and technically feasible.
  
- v) **Hazardous Products.** Only to the extent applicable to the Grantee's Personal Wireless Service Facilities or carrier neutral facilities, the project proponent shall provide full disclosure of all Hazardous Products proposed to be used at any time at a project site, including current copies of Material Safety Data Sheets for such products. Such disclosure shall be provided in writing to the Building Commissioner with the application. No application shall be considered complete until

such disclosure is submitted to the Building Commissioner. No such Hazardous Products shall be deployed or used at any time at a project site without Town Manager approval which may be withheld at his or her absolute discretion. Use, storage and containment of Hazardous Products shall comply with all Federal, State, Regional, and local codes and regulations, including building, fire, and health codes. The Applicant shall require all manufacturers to attest and certify that all equipment and all other materials used on the proposed site shall not contain Per- and Polyfluoroalkyl Substances (PFAS).

Under no circumstances will equipment which includes Hazardous Products be approved for deployment unless it provides for design containment equal to a minimum of 110% of the Hazardous Product contained in the associated equipment plus an additional volume to include the 100-year storm event over a 24-hour period. The design shall allow for drainage of rainwater but drains shall be fitted with products or devices that shall immediately and fully close off drainage upon contact with any such Hazardous Product. The sump and drainage devices shall be outfitted with alarms that will immediately alert appropriate authorities as designated by the Town from time to time of a release of any Hazardous Product at the project site.

C. **Standard Conditions.** Each grant of location permit shall be subject to the Standard Conditions set forth in this Subsection C.

- 1) **Revocation of Grant of Location for Failure to Construct and/or Operate.** The Grantee shall construct and commence the operation of the approved Personal Wireless Service Facilities within twelve (12) months after its acceptance of the Grant of Location. If the Grantee has not commenced operations within such twelve (12) month period, the Town may notify the Grantee of its intent to revoke the Grant of Location and direct the removal of any unused Personal Wireless Services Facilities thirty (30) days after the date of such notice. In the event of a revocation of a Grant of Location, a new Application must be submitted.
- 2) **Certification of Use of Personal Wireless Facilities; Abandonment and Removal.** If requested by the Town, a Grantee shall submit a list of locations of its Personal Wireless Facilities in the Public Ways, identify any such location where such facilities are not currently operated or used and specify when such facilities ceased being operated or used. Any Personal Wireless Service Facilities that are not operated or used for Personal Wireless Services for a period of one hundred eighty (180) consecutive days or more shall be deemed

abandoned. The Town shall have the right to notify the Grantee that such abandoned facilities must be removed within thirty (30) days of the date of such notice. At the time of removal, the Personal Wireless Service Facilities and all associated debris shall be removed. If the Grantee does not comply with a removal notice, the Town shall have the right to remove the Personal Wireless Service Facilities at the expense of the Grantee.

- 3) **Non-Emergency Repairs.** Non-emergency repairs shall be performed as follows: (1) at least forty-eight (48) hours advance notice shall be provided to the Director of Public Works and the Police Department; (2) a police detail may be required at the sole cost and expense of the Grantee; and (3) work shall be performed on weekdays during hours designated by the Director of Public Works.
- 4) **Removal of Utility Pole.** In the event that a Utility Pole is being removed and replaced by the pole owner(s), the Grantee shall transfer the Personal Wireless Service Facilities to the replacement pole in accordance with the pole attachment agreement(s) between the Grantee and the pole owner(s). In the event a pole is not a double pole, and the pole owner no longer needs the pole for its own use and is proposing to remove the pole and not replace it, the Grantee shall have the right to remain on the pole pursuant to its grant of location, but shall reasonably cooperate in moving its equipment to another available and technically suitable pole if one is available and approved for the attachment of its Personal Wireless Service Facilities and the grant of location allowed for the removed pole location shall terminate.
- 5) **Licenses and Permits.** The Grantee must obtain all other permits required by law. A grant of location is subject to this condition.
- 6) **Performance Bond.**
  - a) The Grantee shall maintain at its sole cost and expense a performance bond running to the Town, with good and sufficient surety licensed to do business in the Commonwealth of Massachusetts in the sum of Ten Thousand Dollars (\$10,000) for each location. The amount of the bond is intended to cover the cost of removal of the Grantee's facilities, the cost of disposal of such facilities and other reasonably related costs. The amount of the performance bond may be adjusted from time to time to take into account changes in costs.

- b) The performance bond shall be conditioned upon the faithful performance and discharge of all obligations of the Grantee under its grant of location.
  - c) The performance bond shall remain effective during the period in which the grant of location is in effect as well as through the time of removal of all of the Grantee's Personal Wireless Service Facilities or carrier neutral facilities provided for in the Grant of Location, and shall be conditioned that in the event that the Grantee shall fail to comply with any one or more of its obligations, the Town shall recover from the surety of such bond all damages suffered by the Town as a result thereof.
  - d) Said bond shall be a continuing obligation under a grant of location. In the event that the Town recovers from said surety, the Grantee shall take immediate steps to reinstate the performance bond to the appropriate amount required above. Neither a performance bond accepted by the Town, nor any damages recovered thereunder, shall limit the liability of the Grantee.
- 7) **Indemnification.** To the fullest extent permitted by law, the Grantee shall, at its sole cost and expense, indemnify, defend, and save harmless the Town and all of the Town's officers, agents and employees from and against all suits and claims of liability of every name and nature, including attorney's fees and costs of defending any action or claim, for, or on account of, any claim, loss, liability or personal injury or death or damage to property of the Town or any person, firm, corporation or association related to, arising out of or resulting from any act, omission, or negligence of the Grantee, its officers, agents, representatives, employees, permittees, licensees, guests and invitees, or by its contractors and their officers, agents, representatives, employees, permittees, licensees, guests and invitees related to, arising out of or resulting from the construction, installation, maintenance, operation and/or removal of Personal Wireless Facilities under a grant of location from, and any related license agreement with, the Town, and/or its/their failure to comply with the terms and conditions of the grant of location and/or any related license agreement, except to the extent such claims were caused by the Town's gross negligence or willful misconduct. Such claims shall include, but not be limited to, claims arising from the release or threat of release of oil or hazardous materials, substances or wastes, or assessing, containing, removing, or disposing of the same, claims arising from Radio Frequency Emissions and claims arising from Grantee's failure to provide

adequate safety and security at the location of its activities authorized by the grant of location and any related license agreement. These indemnification provisions are independent of, and shall not be deemed to be limited, released, waived or modified in any respect by reason of any surety or insurance provided by the Grantee pursuant to the grant of location or any related license agreement with the Town. These indemnification provisions shall survive the expiration or termination of the grant of location and any related license agreement.

- 8) **Insurance.** At its sole cost and expense, the Grantee shall carry insurance at minimum in the types and amounts as described in this section and provide copies of all insurance policies to the Town prior to construction of its Personal Wireless Service Facilities:
- a) **Commercial General or Public Liability Insurance.** Grantee shall carry appropriate commercial general or public liability insurance which shall include coverage for bodily injury and personal injuries as to third persons based upon the uses and equipment placed on or at the location(s) on which Personal Wireless Service Facilities, including related Structures, will be installed or constructed (“Location(s)”) in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and a minimum of Two Million Dollars (\$2,000,000) in the aggregate, or such higher amounts of insurance coverage that are prudent given the risks inherent in the Grantee’s activities on and use of the Location(s), or that the Town shall reasonably require from time to time. This insurance must be primary and non-contributory with respect to the losses for which the Grantee is responsible.
  - b) **Insurance for Town Property.** The Grantee shall obtain and furnish proof of sufficient property damage (fire, vandalism, structure, etc.) insurance for Town property, i.e., any Town-owned Infrastructure, equipment, or other property at, on or within the Location(s) in at least the minimum amount of One Million Dollars (\$1,000,000) per occurrence and a minimum of Two Million Dollars (\$2,000,000) in the aggregate or such higher amounts of liability insurance coverage that are prudent given the risks inherent in the Grantee’s activities and use of the Location(s). This insurance must be primary and non-contributory.
  - c) **Fire and Casualty Insurance.** The Grantee shall carry fire and casualty or “all risk” liability insurance for its own equipment in amounts that are

prudent given the risks inherent in the Grantee's activities and use of the Location(s). This insurance must be primary and non-contributory.

- d) Workers' Compensation. The Grantee and Grantee's contractors shall also provide evidence of sufficient Workers' Compensation insurance as required by Massachusetts law.
- e) Additional insurance. The Grantee should consider obtaining any additional insurance to cover its risks inherent in its activities on and use of the Location(s), including, but not limited to, Professional Services, Motor Vehicle, Construction/Completed Operations, Vandalism, Terrorism, Flood, Wind, Hail, etc.
- f) The Licensee must purchase a notice endorsement such that the Town is provided no less than thirty (30) days prior notice of cancellation for non-payment reasons and no less than ten (10) days prior notice for cancellation for payment reasons. The Grantee shall also obtain an endorsement for each location explicitly naming the "Town of Barnstable" as an additional insured on all applicable policies except Workers' Compensation. Such endorsements shall be evident on any certificates of insurance provided to the Town and may be submitted by e-mail.
- g) The Grantee shall furnish to the Town Certificates of Insurance and proof of the required endorsements issued by an insurer or insurers qualified to do business in Massachusetts with an A.M. Best rating of no less than A, Class VI or higher or an equivalent Standard & Poor's Rating of AA+/- or higher upon the issuance of a Grant of Location and the execution of any related license agreement and updated annually during the term of the Grant of Location and License. The Grantee shall provide such Certificates of Insurance and proof of required endorsements to the Town office designated in the License.
- h) Such insurance coverage shall commence no later than the date on which construction of Personal Wireless Service Facilities is commenced. Failure to maintain such insurance during the period in which the grant of location and any related license agreement is in effect shall be grounds for revocation of such grant of location and license agreement.



- 9) **As-Built Drawings.** The Grantee shall submit as-built drawings to the Town within thirty (30) days after installation of its Personal Wireless Service Facilities. As-built drawings shall be in an electronic format acceptable to the Town which can be linked to the Town's Geographic Information System (GIS). To the extent practicable, as-built drawings should be able to be incorporated into the GIS layers.
- 10) **Construction in Compliance with Approved Plans.** The Grantee must construct, operate and maintain the Personal Wireless Service Facilities in strict compliance with the approved plans.
- 11) **Current Contact and Site Information.** The Grantee shall submit with its application and maintain current basic contact and site information on a form to be supplied by the Town. Such information shall include, but is not limited to: (a) name, address, email address and twenty-four (24) hour local or toll-free and cellphone numbers of the Grantee, the owner, operator and agent or person responsible for maintenance of the Personal Wireless Service Facilities; (b) the owner of the Personal Wireless Service Facilities; and (c) emergency contacts in the event of emergency situations. Notice of any change in contact information shall be provided within three (3) days of the effective date of such change. Notice of any assignment or change in ownership shall be provided to the Town within three (3) days of such assignment or change in ownership; provided that any assignment shall require the consent of the Town, the provision of which shall not be unreasonably delayed or denied.
- 12) **Relocation.** A Grantee shall promptly remove and relocate, at no charge to the Town, any facilities or equipment if the removal of a Utility Pole or Structure is made necessary by a change in the grade, alignment or width of any public way, or by construction, maintenance or operation of any Town facilities.
- 13) **Dig Safe; NJUNS.** The Grantee shall comply with all applicable Dig Safe statutes and regulations. The Grantee shall join the National Joint Utilities Notification System ("NJUNS") and participate in the double poles removal process in accordance with NJUNS practices. In the event that the Town requests periodic meetings with pole owners and attaching entities, the Grantee shall have a representative attend or participate virtually.

#### § 435-7 Amendments to Regulations

These Regulations may from time to time be amended by the Town Manager in accordance with applicable law.

**§ 435-8 Severability**

The provisions of this chapter are severable. In the event that any part of these Regulations is declared invalid by a court of competent jurisdiction, the validity of the remaining parts of the Regulations shall not be affected.

**§ 435-9 Compliance with Applicable Laws**

To the extent not specifically required in these regulations, Grantees shall comply with all applicable laws.

**§ 435-10 Effective Date**

These regulations are effective as of September 18, 2023.