

**Town of Winchester Policy on Small Wireless Facilities and Substantially Similar  
Facilities in the Public Rights of Way  
January 27, 2020**

**Policy for Small Wireless Facilities and Substantially Similar Installations**

Subject to the Federal Communications Commission (FCC) Order *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, FCC WT Docket Nos. 17-79 and 17-84, released September 27, 2018 (“*FCC Small Cell Wireless Order*” or “*FCC Order*”); 47 United States Code §§ 253 and 332 (federal statutes on right-of-way telecommunications and wireless siting); the Massachusetts grant of location statutes, M.G.L. c. 166, §§ 21-22 if and to the extent applicable; and any other applicable laws and regulations, the Town of Winchester ("Town") by and through its Select Board hereby adopts this Policy concerning Applications for Small Wireless Facilities, as defined by the *FCC Order*, and substantially similar installations within the public rights of way of the Town.

**Definition of Small Wireless Facilities**

For purposes of this Policy, Small Wireless Facilities, installations and/or equipment shall include such equipment and related appurtenances and devices as are defined as “Small Wireless Facilities” in the FCC Small Cell Wireless Order the text of which is set forth in footnote 1, below.<sup>1</sup> Consistent with the foregoing, to the extent required by applicable law, it shall be the policy of the Select Board to review and act on Small Wireless Facilities applications in a manner that does not effectively prohibit or materially inhibit Small Cell deployments and is non-discriminatory with respect to similarly situated applicants.

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<sup>1</sup> The FCC definition of Small Wireless Facilities:

“Small Wireless Facilities,” as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

- (1) The facilities—
    - (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
    - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
    - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
  - (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 this chapter;
  - (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).
- (Source: *FCC Order* at Para. 11, fn. 9)

References herein to Small Cell Wireless. Small Wireless Facilities, Small Cells or similar terminology shall include any and all small cell wireless devices, facilities and associated equipment to the extent subject to the FCC's Small Cell Wireless Order and shall include substantially similar facilities as set forth immediately below.

### **Substantially Similar Systems**

It is the intent of this Policy that with respect to wireless devices, facilities and infrastructure that are substantially similar to but not included within the FCC's definition of Small Wireless Facilities set forth above, an operator of such substantially equivalent facilities may apply for approval of such installations under this Policy upon a showing of such substantial similarity by the applicant.

### **1. Application Process**

a. Applications or petitions ("applications") for placement of Small Wireless Facilities in the Town's public ways shall be submitted to the Select Board through the Office of the Town Manager accompanied by the appropriate application fee per application, payable to the Town of Winchester. An initial \$500 fee per application will cover up to 5 locations in an application. Any application which contains more than 5 locations shall include an additional fee of \$100 per location. An application for a new pole shall include a non-recurring fee of One Thousand Dollars (\$1,000.00).

b. The applicant shall pay for legal notice of the public hearing including local newspaper notices and notice to abutters, as applicable. The applicant is responsible for obtaining the abutters list from the Town for each pole or other public way installation location within the application and is responsible for notice-giving to abutters in the manner prescribed in M.G.L. c. 166 §§ 21-22 and/or such other lawful notice rules, if any, as may be in effect and applicable or as may be adopted by the Select Board or their designee(s).

c. Ten (10) hard copies of the application and 1 (one) electronic copy of the application shall be submitted to the Office of the Town Manager. No application will be accepted for review and deemed complete until all items listed in 2, below, have been submitted, and all fees and the costs of the abutters list are paid.

d. Upon receipt, the Office of the Town Manager shall: (1) date and time stamp the Application as received; (2) make a determination as to completeness of the Application and (3) shall notify the Applicant, in writing (which may be by email), within 10 days, if the Application is not complete. If the Applicant is notified that the Application is not complete, the time periods set forth in this Policy shall be tolled until such time as a complete Application has been submitted.

e. Once deemed complete, and no later than 10 days after receipt, the Office of the Town Manager shall expeditiously circulate a copy of the application to the following for comment and review: Department of Public Works; Building; Engineering; Planning; Health, the Design Review Committee; and, any other department the Town Manager, in his or her sole discretion, determines.

f. Written comments from the departments shall be submitted to the Office of the Town Manager within 20 days of circulation of the application and shall be a part of the record of a hearing if and as may be required pursuant to M.G.L. c. 166, §§21 – 22 and/or other applicable law.

g. Once the application is deemed complete, and all comments have been received, the Select Board will schedule and hold a public hearing to consider the application, such that a determination may be made on any application for an installation on an existing structure in a public way within 60 days of receipt of the application, and on a new structure in a public way, within 90 days of receipt of the application, subject to any such extensions of time being consistent with the FCC *Small Cell Wireless Order*.

h. To the extent consistent with the FCC *Small Cell Wireless Order* and applicable law, material changes to an application, as determined by the Town in its reasonable discretion, shall constitute basis for deeming the application a new application for the purposes of the time standards. Where a materially changed or new application is submitted, the prior application shall be deemed withdrawn.

i. Upon completion of the hearing, the Select Board may grant, grant with conditions, or deny the application, or issue such other administrative orders as may be lawful, based on review of the hearing record and such factors therein that may lawfully be considered by a local board, including but not limited to review of public way safety factors, the capacity or lack of capacity of the pole or mounting structure; or failure to meet applicable engineering standards with all of the foregoing being consistent with 47 U.S.C. §§ 253 and 332, the *FCC Small Cell Wireless Order* and other applicable law, and in furtherance of applicable electrical, fire, building and construction codes and/or such other codes as in effect and applicable in the Commonwealth of Massachusetts. Implementation of the siting process shall not materially inhibit the applicant's small cell wireless deployments or be unlawfully discriminatory to the applicant relative to similarly situated small cell wireless systems.

j. Any approval granted to an applicant shall be only for the specific applicant and application locations. Any change in the carrier or change in the small cell wireless locations will require a new application for the change of carrier and/or new locations, Where the carrier discloses and certifies in writing that a change in name or change of the carrier is taking place without any actual change to the operation of the small wireless facilities, the Select Board may waive holding of any hearing on the approval of the name or ownership change. Any new owner or party controlling the company authorized to use the Town's rights-of-way shall assume any and all outstanding obligations to the Town of the prior owner or controlling party and shall affirm same in writing unless otherwise approved by the Town in writing.

k. The Select Board may waive particular terms and conditions where substantial compliance with this Policy can be maintained and for good cause shown including need for facilitation of the avoidance of effective prohibitions.

## 2. Content of Applications

Applications shall include the following information:

- a. Applicant's name, address, telephone number and email address.
- b. Names, addresses, telephone numbers, and email addresses of persons acting on behalf of the Applicant with respect to the application including designation of a lead person for the Town to contact concerning Applicant's proposal(s) and possible grant of location orders, right-of-way use agreements and licenses if any and other matters arising hereunder.
- c. Photographs of the equipment proposed for installation.
- d. Reasonably detailed drawings or other renderings showing elevation data; height and other dimensions of the equipment including the amount of cubic feet occupied by the Small Wireless Facilities and customary technical specifications;
- e. To meet lawful and reasonable pedestrian and vehicle safety needs and other public safety and right-of-way management interests pertaining to use of the Town's public ways, applicants shall in their applications disclose how their practices ensure installation and operation that do not cause public safety harms or harms to the use of the Town's public ways including a brief description of applicant's practices concerning pedestrian and vehicle traffic safety practices, use of barricades, police details and other standard procedures used during installation and make-ready work.
- f. To protect lawful and reasonable aesthetic and location interests of the Town and its residents, an applicant shall in its application disclose whether it provides multiple hardware, design, color and aesthetic options and features that may reduce the size and/or improve upon visual characteristics of the small cell hardware.
- g. Applicant shall state in its application if, when and how it is available to voluntarily meet with the Town Engineer, the Town Planner, the Director of Public Works and/or a designee of the Select Board to discuss public safety; right-of-way management practices; size, color, concealment and other design options, if any, and to discuss other Town information needs, if any.
- h. Narrative descriptions of the overall system deployment and the specific equipment proposed to be installed, stating whether the equipment is mounted on poles, underground or on the ground, or otherwise, including:
  1. Type(s) and model(s) of equipment
  2. Descriptions and specifications of equipment (including but not limited to dimensions, cubic feet occupied by the equipment and weight of equipment to be installed)
  3. Equipment mount type and material
  4. As applicable, estimated total number of poles planned for use in the Town, estimated length of fiber, wire or cable to be installed in the Town in connection

- with the wireless facilities, including a breakdown, if applicable, of aerial and underground fiber, wire or cable;
- 5. Power source or sources for equipment, including necessary wires, cables, and conduit
- 6. Expected life of equipment
- 7. For informational purposes:
  - a. Number of antennas and number of other quantifiable devices;
  - b. Antenna and device models and dimensions including cubic feet data;
  - c. Typical facility coverage area radius
  - 8. Information on hardening of the system, including:
    - d. Whether there is battery backup power supply and the expected duration of such power supply, if any;
    - e. Whether there is generator backup and its expected useful life.
- 8. Rendering and elevation of equipment on the proposed site(s)
- 9. Disclosure and identification of any known property and/or personal injuries, public safety hazards and/or risks associated with the equipment or that have been the subject of complaints or legal challenges by local, state and/or federal officials, abutters, pole and/or conduit owners and/or pole/conduit attachers.

i. Detailed drawing or other rendering depicting both existing and proposed conditions within 25-feet of the proposed work. Drawing or rendering shall be to scale and shall include the following information:

- 1. Applicable Right-of-way features and limits;
- 2. Existing walkways, accessible ramps, driveway openings, side streets, hydrants, fire pull boxes, curbing, grassed strips, street trees, mailboxes, stone walls, trees with a diameter greater than eight inches, utility gate boxes and all Town-owned sub-surface utilities.
- 3. Proposed locations of proposed equipment including all wiring, appurtenances and proposed location of screening/concealment.
- 4. The drawing or rendering shall be accompanied by statements from a qualified person stating that (a) sight line distances available to existing driveways and side streets will be maintained post construction and (b) that ADA accessibility will be maintained and if not currently ADA compliant, the installation of equipment will make the project area no more non-compliant.

j. Map or documentation with locations of the poles or other facilities on which equipment is to be located, including specific pole identification numbers, if applicable, and the areas it will service.

k. Map showing existing and proposed small cell installations within 500 feet of the Application site.

l. Certification by a registered professional engineer that the pole/or location will safely support the proposed equipment and otherwise comply with applicable codes.

m. Location of all equipment shall be marked out with flagging and paint at the time of application.

n. Written consent of the pole or facility owner to the installation. If a new pole is being proposed, detail any sightline impacts.

o. Insurance certificate and a statement from the applicant that if granted locations in the public ways or elsewhere within the Town it will maintain insurance naming the Town and its Departments as additional insureds and the Town and upon written request the Small Wireless facilities applicant or operator shall provide the Town a certificate of insurance showing the Town so named as an additional insured. Such insurance shall include general liability insurance of at least \$1,000,000.00 for bodily injury and property damage with a \$3,000,000.00 aggregate limit per insured event and shall include such other insurance and be in amounts not less than the coverages currently maintained by the Town of Winchester and not less than applicant's insurance in effect in other comparably sized Massachusetts towns, if any. Umbrella liability of at least \$5,000,000.00 per occurrence with a \$5,000,000.00 Annual Aggregate naming the Town as an additional insured.

p. Description as to why the desired location is superior or at least equivalent to other similar locations, from a community visual or aesthetic perspective, including:

1. Visual aspects – stealth/concealment components required in most cases
2. Proximity to residences.
3. Description of good faith efforts to co-locate the equipment on existing structures, poles, or towers which currently exist or are under construction and evidence of reasonable efforts toward minimizing visual impacts shall be included within the application.

q. Copy of FCC frequency license(s) or statement of basis, if applicable, for not having an FCC frequency license(s)

r. Certification from the applicant which certifies that it will maintain the installations in good repair and according to FCC standards and applicable law and codes, and will remove any installation not in such good repair, or not in use, within 90 days of being no longer in good repair or no longer in use.

s. A list of other municipalities that have issued i) grant of location orders to applicant and 2) that have entered license agreements or similar right-of-way usage agreements with applicant in the past three years; and copies of the five most recent grant of location orders and license agreements issued by Massachusetts municipalities to applicant.

t. A written statement, signed by the applicant that the applicant/permittee agrees, as a condition of any permit approval, that it shall defend, indemnify, and hold harmless the Town, its Select Board, other board, commissions, officials, officers, agents, contractors, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs, and expenses, including court costs and reasonable attorney's fees resulting from

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

u. For informational purposes and not in connection with criteria for review of the application, please describe the services to be provided including whether the applicant is proposing to provide services to other telecommunications, broadband or cable television companies in the Town or to directly sell or transmit services to residential and business customers located in the Town; and including a statement as to whether the applicant is planning to sell multi-channel video programming to subscribers in the Town. (Note: Notwithstanding the Town's lack of jurisdiction over the choice of telecommunications and/or information service provided, the Town, as both a consumer of services and as a source of information to businesses and consumers within the Town, has a legitimate *informational interest* in knowing what is provided and available within its bounds.)

v. Copies of all required permits necessary to construct or install the facility which is the subject of the application. No application shall be deemed complete until all such permits have been received, and proof of same is provided.

### **3. Safety and Design Guidelines**

#### General

a. Preference is to co-locate on existing utility poles, secondary preference is for location on vehicular street light poles (not pedestrian-scale lights or historic style street lights), with last preference for a freestanding pole. Small wireless facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the applicant's ability to provide wireless service. To minimize congestion and the presence of persons maintaining ROW installations around children and schools, the preference of the Town is for small wireless facilities to be located not less than one hundred fifty (150) feet from any public school property unless such standard would in a particular deployment be prohibitive in effect and applicant shall exercise diligent efforts to deploy in and around locations other than schools serving children.

b. If a freestanding pole is deployed, design shall reasonably match the style of existing poles within the Town installed adjacent to the pole. If existing streetlights are used, design shall be reasonably consistent with the design of similar streetlight attachments.

c. The small cell components shall be sized to be visually pleasing including the following: the transition between the equipment cabinet and the upper pole should be considered and a decorative transition shall where feasible be installed over the equipment cabinet, or decorative base cover shall be installed where feasible to match the equipment cabinet size.

d. Hardware connections shall be hidden from view to the maximum practicable extent. In general, ground mounted equipment is to be avoided, and placed underground unless the applicant can demonstrate that pole-mounted or underground equipment is technically

infeasible. If ground-mounted equipment is necessary, then applicant shall comply with other element requirements of this section and the Town's regulations and bylaws. No horizontal flat spaces greater than 1.5 inches shall exist on the equipment cabinet so as to prevent cups, trash, and other objects from being placed on the equipment cabinet. Each pole component shall be architecturally compatible to create a cohesive aesthetic.

e. Small Wireless Facility fans, if required, and other components of Small Wireless Facilities shall not emit noise greater than 35dBa at one meter (3.28 feet) if technically feasible, and in no case shall emit noise greater than 58 dBa at one meter.

f. Antenna and pole attachment shall be shrouded to the maximum extent practicable.

g. If required by the Federal Communications Commission, radio frequency warning labels shall be mounted exterior to the pole.

h. A 4x6" (max) plate with the Carrier's name, location, identifying information, and emergency telephone number shall be permanently fixed to the pole. No other signage, message, or identification is allowed to be portrayed on any antenna or equipment enclosure.

i. No artificial lights other than those required by law or other applicable authority shall be permitted. All lights shall be down-shielded, and installed to be consistent with Town zoning bylaws if and to the extent addressed in the Town's zoning bylaws (Section 5.4)

j. These design standards are intended to be used for the purpose of promoting reasonable concealment and siting consistent with the FCC Order and in furtherance of Town maintenance of the infrastructure and aesthetics in the public ways. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the applicant, alternative forms of concealment or deployment may be permitted which provide similar or otherwise reasonable protections from negative visual impacts to the streetscape.

k. No ground equipment shall be placed within five (5) feet of Town-owned subsurface utilities without the written consent of the Director of Public Works.

#### **4. Placement**

a. The preferred location of a small wireless facility on a pole is the location within the pole area available for use and with the least impact on driver and pedestrian visibility, and the least visible impact consistent with applicable public way safety standards, fire and electrical codes, industry codes and other codes governing applicant's operations and installations.

b. The Town may consider the cumulative public safety and visual effects of small wireless facilities mounted on poles within the rights-of-way when assessing proposed siting locations so as to not adversely affect the safety and integrity of the Public Ways and not be incompatible with the visual character standards of the Town in accordance with this Policy and the standards herein. This provision shall neither be applied to limit the number of permits issued when no alternative sites are reasonably available nor to impose service or technological requirements on the applicant.

c. Preference is to locate in the public right-of-way rather than outside the public right-of-way.

d. New installations should not be located along the frontage of a historic building registered as a historic site on a federal, state, or local level.

e. Installations, including proposed methods of concealment shall not reduce driveway stopping sight distance and intersection sight distances below AASHTO guidelines.

f. Small cells shall be located such that they in no way impede, obstruct, or hinder the usual pedestrian or vehicular travel, snow removal, affect public safety, obstruct the legal access to or use of the public ROW, violate applicable law, violate or conflict with public ROW design standards, specifications, violate the Federal Americans with Disabilities Act, or in any way create a risk to public health, safety, or welfare.

g. Small cell wireless facilities should be located at the intersection of property lines, or along secondary property facing the street where feasible.

h. When new poles are located adjacent to a commercial establishment, such as a shop or restaurant, care should be taken to locate the small cell such that it does not negatively impact the business, e.g. in front of store front windows, primary walkways, entrances/exits, or in a way that would impede a delivery to the building. Small cell facilities should be located between properties as much as possible.

i. Small cell wireless facilities shall be located within the street amenity zone whenever possible, within the ROW, and off set from the sidewalk.

j. Small cell wireless facilities shall be aligned with existing trees, utility poles, and streetlights where feasible.

k. Small cell wireless facilities shall be placed at an equal or substantially equal distance between trees when possible with a minimum 15 foot separation such that no proposed disturbance shall occur within the critical root zone of any tree.

- l. Small cell wireless facilities shall be placed an appropriate clearance from existing utilities.
- m. Small cell wireless facilities shall be placed outside of the 20-foot equipment clear zone or 30-foot clear sight triangle at intersection corners.
- n. Small cell wireless facilities shall be placed 10 feet away from the triangle extension of an alley way flare.
- o. Shall not be located within 100 feet of the apron of a fire station or other adjacent emergency service facility.
- p. The placement requirements for deployments not using existing structures above do not apply for locations on existing streetlights and existing utility pole locations.
- q. New poles in the rights-of-way for small wireless facilities and installations within the CBD, historic districts, or scenic ways are only permitted if the applicant can establish that:
  1. The proposed small wireless facility cannot be located on an existing utility or light pole on a nearby side street, or on a site outside of the public rights-of-way such as a public park, public property, building, transmission tower or in or on a nonresidential use, whether by roof or panel mount or separate structure;
  2. The proposed small wireless facility received approval from the Select Board for a shrouded or concealed element design.

## **5. Tri-Annual Re-Certification and Affidavit**

- a. Every third year after an operator's first small wireless facility approval by the Town, the equipment owner shall submit an affidavit which shall list, by location, all small cell wireless installations it owns within the Town of Winchester by location, and shall certify:
  - (1) each such installation that remains in use;
  - (2) that such in use installations remain covered by insurance; and
  - (3) each such installation which is no longer in use.
- b. The equipment owner shall pay a tri-annual re-certification fee of \$270 per installation which remains in use or which remains installed in the public way prior to removal in accordance with clause c. of this Section 3.
- c. Any small cell wireless installation which is no longer in use shall be removed by the owner within 90 days of receipt of the tri-annual re-certification affidavit, at the owner's expense.
- d. Any small cell wireless installation which is not removed within 90 days after being listed as no longer in use in the tri-annual re-certification affidavit shall be subject to either paying to the Town liquidated damages of \$100/day if available to the Town under a grant of location order or license or agreement of the Town and the small cell wireless provider or an

administrative civil fine of \$100/day until such installation is removed subject to any such fine being imposed pursuant to and in accordance with any applicable law regarding the adoption and imposition of fines.

e. Where such annual re-certification has not been timely submitted, or equipment no longer in use has not been removed within the required 90-day period, no further applications for small cell wireless installations will be accepted by the Town until such time as the annual re-certification has been submitted and all fees, uncontested liquidated damages and/or uncontested fines, if any, are paid.

#### **5A. Abandonment and Removal of Small Wireless Facilities**

##### **A. Removal.**

Within 90 days following written notice from the Town, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities co-located on a Town pole, whenever the Town has reasonably determined that such action is necessary for the construction, repair, maintenance, or installation of any Town improvement in the ROW or the operations of the Town in the ROW.

##### **B. Abandonment.**

The Town may require a wireless provider to remove a small wireless facility permitted hereunder within 90 days after the date that the facility ceases to be used unless the wireless provider gives the Town reasonable evidence that it is diligently working to place the facility or pole back in service. Should the wireless provider fail to timely remove the small wireless facility or pole, the Town may remove such facility and recover the actual, reasonable costs of such removal from the wireless provider.

#### **6. Miscellaneous Policies**

a. In furtherance of the Town's interest in facilitating removal of double poles, new small cell wireless installations and associated devices shall not be installed on double poles prospectively as of the effective date hereof.

b. No small cell wireless installation shall be installed in such a manner or way that violates applicable ADA requirements, if any.

c. No small cell wireless installations shall remain within the Town rights of way if they have not been certified as in use in the annual recertification affidavit filed under 3(a) above and shall be removed not later than 90 days after being listed as no longer in use in the annual re-certification.

d. No small cell wireless installation equipment shall be replaced or altered without a re-application, hearing, and approval from the Select Board unless the replacement or

alternation are insubstantial or if the replaced or altered equipment is no longer properly functioning or otherwise needs replacement and it is being replaced with the same or substantially similar equipment.

e. With respect to Small Cell Wireless Facilities, this Policy shall supersede and replace the Town of Winchester policy and guidelines document titled, *Rules and Regulations Governing Street Opening Permits and Grants of Location in the Town of Winchester, Massachusetts* adopted by the Board of Selectmen April 30, 2007.

**Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020**

\_\_\_\_\_ **Mariano Goluboff, Chair**

\_\_\_\_\_ **Michael Bettencourt, Vice Chair**

\_\_\_\_\_ **Jacqueline A. Welch**

\_\_\_\_\_ **Amy Shapiro**

\_\_\_\_\_ **Susan Verdicchio**