

Stanley J. Usovicz
Regional Director
External Affairs



63 High Street
Danvers, MA 01923

Phone 978 750-5656
stanley.j.usovicz@verizon.com

May 8, 2018

Councilor Deborah Crossley
Chair, Public Facilities Committee
Newton City Council
1000 Commonwealth Ave.
Newton Centre, MA 02459

Re: Proposed City Council Regulations Governing Petitions for Wireless Communications

Dear Councilor Crossley:

Verizon Wireless has reviewed the "draft" of the *City Council Grant of Location Procedures and Standards for Wireless Communications Facilities to be Located in Public Ways* as provided by Alan D. Mandl – Assistant City Solicitor. Please find attached Verizon's comments and edits to that "draft."

We offer our edits and comment, with the intent of trying to address some of the more significant concerns it has about the current draft of the regulations. We understand that you are planning to take public comment at some point during the Committee process. We look forward to participating these secessions and the opportunity to provide further input as the proposal continues through the legislative process.

As we have stated earlier, Verizon Wireless does not believe that the City necessarily needs specialized regulations to address wireless attachments, since the existing grant of location process allows an adequate and appropriate review process. We would encourage the Committee to foster an efficient and cooperative approach towards expanding and improving wireless service for Newton residents and businesses. We would be happy to assist your Committee and City staff in evaluating ways to avoid unnecessary delays, costs and regulatory burdens, and reduce the risk of potential challenges to the regulations, while still protecting the City's legitimate interests.

We appreciate the continued dialogue and hope that we can continue to have a constructive with the City of Newton on this subject.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Stan Usovicz", with a long horizontal flourish extending to the right.

Stan Usovicz
Verizon – Government Relations
Copy: Mayor Fuller and City Council

CITY COUNCIL GRANT OF LOCATION PROCEDURES AND STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES TO BE LOCATED IN PUBLIC WAYS

I. INTRODUCTION

The City Council regulates the placement of wireless communications facilities in the public ways pursuant to municipal authority under Massachusetts General Laws Chapter 166, Sections 21 *et seq.*, other applicable Massachusetts Laws, City Code Section 23, and applicable federal law, including 47 U.S.C. §§253 and 332(c)(7).

The public ways in Newton are a uniquely valuable resource, closely linked with the City's residential character and natural beauty. Many public ways have been enhanced by the planting and maintenance of public shade trees.

The City Council wishes to preserve and protect community safety and aesthetics in its residential neighborhoods and village centers, consistent with its streetscape design principles. Many residences have a small amount of frontage between the residence and the public ways. Public ways, including sidewalks, must remain accessible and safe under ADA and traffic standards. The City has several scenic roadways. It also has historic districts and historic buildings. Aesthetics and compatibility with immediate surroundings are important considerations in reviewing future use of the public ways.

A competing consideration is a public interest in maximizing wireless service coverage and enabling wireless service capacity that is adequate to meet the needs of the City (including public safety communications needs), its residents and businesses. Further, the City Council recognizes that its authority to regulate the use of the public ways is subject to and limited by both state and federal laws.

The potential for proliferation of wireless communications facilities attachments to utility poles in public ways, due, in part, to recent changes in federal law, evolving wireless technology, and demand for wireless services has created a significant concern about degradation of the character of residential areas, village centers, scenic roads and historical districts, and adverse impacts upon public safety and well-being of City residents and other users of the public ways.

The City Council also wishes to limit noise and vibration levels that may be associated with some types of wireless communications facilities. The City Council cannot base grant of location orders upon radio frequency emissions from wireless communications facilities in the public ways, except that it may require proof of continuing compliance with FCC requirements.

Comment [MSG1]: These sites operate at low power and conform to applicable RF safety standards. There is no legitimate legal grounds for requiring periodic proof of continuing compliance unless the City has some genuine basis for questioning whether a particular site remains in compliance. Requiring annual certification and the like imposes a burden on the carrier and is itself a violation of Section 332(c)(7). Requiring proof of compliance on a site by site basis at the time of application is permissible but unnecessary and also imposes a burden. Note that the City already has antennas on utility poles that are not operated by wireless service providers. There is no legitimate legal or policy basis for applying different standards of review to antennas that carriers propose to place on poles in the right of way and those that are placed on poles by the electric and cable TV utilities, dispatch companies, and the City itself.

The City Council therefore finds it necessary and desirable to provide for reasonable regulation and orderly deployment of wireless communications facilities in the public ways. Accordingly, it adopts these Wireless Grant of Location Procedures and Standards (the “Procedures and Standards”).

II. SCOPE OF THESE PROCEDURES AND STANDARDS

These Procedures and Standards govern the permitting of (1) wireless communications facilities attachments to existing or replacement utility poles which are located in the public ways and which do not have any pre-existing wireless attachments; (2) wireless communications facilities attachments to existing or replacement poles which are located in the public ways and which do have pre-existing wireless attachments, but do not satisfy the requirements under 47 U.S.C. §1455 and related Federal Communications Commission (“FCC”) regulations; and (3) constructing a new pole in a public way for purposes of providing wireless communications services. A party seeking to attach to a City-owned pole also will be required to enter into a license agreement with the City and comply with its terms and conditions.

A separate application form with instructions has been prepared for “eligible facilities requests”, as defined under 47 U.S.C. §1455 (and related FCC regulations), that 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 approval pursuant to 47 U.S.C. §1455 and related FCC regulations, the Applicant must submit a separate application in accordance with related instructions. If that application is denied, the applicant may submit a new grant of location application governed by these Procedures and Standards.

III. GRANT OF LOCATION APPLICATION PROCEDURES

A. Who May Apply

An applicant must demonstrate that it is qualified and eligible under G.L.c.166, §21 to place its facilities on utility poles located in the public ways. A Statement of Business Operations filing with the Massachusetts Department of Telecommunications and Cable, if any, should be provided, and a link to existing tariffs, if any, should be supplied. Where applicable, current records of any FCC license to offer service should be provided. The applicant should demonstrate that its proposed facilities will be used to carry out the telecommunications services covered by its Statement of Business Operations and/or FCC license. Also, the applicant should provide evidence of its authority to conduct in Massachusetts the business carried out through the proposed facilities. Carrier neutral applicants shall provide evidence that they have a contract with at least one wireless service provider which will make use of the proposed facilities or that they will accept a condition that they shall not construct proposed facilities unless they have first

submitted evidence that they have a contract with at least one wireless service provider which will make use of the proposed facilities.

B. Application Filings

Applicants shall use the application form provided by the Commissioner of Public Works. This form shall be made available through the Commissioner, City Clerk or on the City website. Use of this application form is required to best assure timely review of the completeness of the application.

Although not required to do so, applicants are encouraged to schedule a pre-application meeting with the City Engineer, Wire Inspector, Fire Department, IT Department and Planning and Development Department to (1) describe their proposed location, Wireless Communications Facilities and plans; (2) identify potential issues; and (3) address questions. If a pre-application meeting is requested, information regarding the proposed location, Wireless Communications Facilities and plans should be submitted to the Commissioner of Public Works at least seven (7) days before the scheduled pre-application meeting. An applicant shall not submit Applications for more than three (3) separate locations at the same time. A separate Application shall be submitted for each separate location.

C. Copies of Application

An Application shall be filed with the City Clerk and the City Clerk will date stamp the application. Applicants are encouraged to obtain a date stamped copy of the application for their own records.

At the time of filing its Application, the Applicant shall submit five (5) copies of the complete application to the Commissioner of Public Works. The application shall be submitted (1) in paper format, (2) in PDF format and (3) in a digital format compatible with the City's systems. The Commissioner will make copies available to other City departments. Applicants will be notified if an Application should be filed through the City's website and a link will be provided by the City.

D. Incomplete Applications

Each application will be logged in by the City Clerk to establish the filing date. The City will follow procedural requirements for incomplete applications and any continued incompleteness established by the FCC in its orders regarding applications to locate wireless communications facilities in the public ways, subject to 47 U.S.C. §332(c)(7). Formal notice of initial incompleteness shall be given by the City Clerk within thirty (30) days of the application filing date and will specifically identify: (1) all missing information; and (2) the code provision,

Comment [MSG2]: Verizon Wireless will not accept this restriction. From a technical and policy standpoint, Verizon Wireless will typically design a grouping of small cell nodes to function in conjunction with one another to improve service in a given area. Forcing these applications to be submitted a few at a time delays the ability to complete the upgrade and increases costs. From a legal standpoint, the City is obliged to receive and process grant of location applications and the telecommunications act and FCC regulations impose "shot clock" requirements limiting the time the City has to complete the review process on these applications.

Comment [MSG3]: There would be advantages to both the applicant and the City of allowing multiple sites to be addressed through the same application, particularly where a group of sites is being designed to serve a particular area. Does the City require that companies other than wireless carriers that attach wires and equipment to utility poles in the street to file a separate application for each pole, or are the applications accepted for the project as a whole or for a given block or neighborhood?

Comment [MSG4]: Application procedures should be standardized and established up front.

application instruction or otherwise publicly stated guideline that requires the information to be submitted.

E. Pole Owner Permission to Attach to Utility Pole

The applicant shall submit evidence of pole owner permission to attach its facilities to the specific pole or poles included in its application (if any). If such evidence is not currently available, as a condition of any grant of location, the applicant must provide to the City, prior to the applicant's commencement of construction of the attachments, such evidence of permission.

F. Tax Attestation

The applicant shall complete the tax attestation which is part of the grant of location application.

G. Application Fees

At the time of filing its Application, the Applicant shall submit the Application Fee specified in City Code Section 17-3. These Procedures and Standards may be revised to reflect any change in the amount of the Application Fee under the City Code. The Application Fee is listed in the Application Form.

Comment [MSG5]: Proposed application fee of \$500 as presented in 2-21-18 Public Facilities Committee agenda package is unreasonably high it greatly exceeds the reasonable costs of reviewing a grant of location petition for a wireless pole attachment .

H. Peer Review

The Public Facilities Committee shall determine whether a peer review of an Application is needed in order for it to fully evaluate the applicant's proposal. A peer review may be conducted at the applicant's expense, as authorized under state statute, City ordinance and City Council regulations.

Comment [MSG6]: When would peer review be conducted? What aspects of the application would be subject to peer review, as opposed to review by City staff. Has peer review ever been used in other grants of location for pole attachments by applicants who are not wireless carriers?

I. Initial Review of Application

The City Engineer, Commissioner of Public Works, a representative of the Planning and Development Department, and as needed, representatives of the Fire, Inspectional Services and IT Departments, will conduct an initial review of the Application in order to determine whether it is complete as provided for above. If the Application is found to be complete, the Commissioner of Public Works and the Planning and Development Department shall submit to the Public Facilities Committee a written report with recommendations within thirty (30) days of the Application filing date. If other departments also have reviewed the Application, they shall submit such written reports and recommendations. These written recommendations shall be typed, dated and provided in letter or memo format. In the event that no initial review is conducted or that such review is not completed within such thirty (30) day period, the Application shall be deemed complete. If an initial review has been completed, the applicant

Comment [a7]: This seems redundant. Should reports be filed by the departments with the City Clerk, who then takes the next steps toward a hearing? Applicant should receive the reports.

should submit to the City Clerk's office a supplement to its Application consisting of the reports and recommendations of the Commissioner of Public Works, the Planning and Development Department and, if necessary, other departments which reviewed the Application.

Comment [MSG8]: We agree with the above comment. The City departments reviewing the application should forward the reports directly to the City Clerk with a copy to the applicant.

J. Notice of Public Hearing

Notice of the public hearing on a grant of location application must be provided in accordance with G.L.c.166, §22 and Chapter 23 of the City Code.

K. Modification or Supplementation of Application

The applicant shall disclose at least forty-eight (48) hours prior to the public hearing any modification(s) of or supplementation to its proposal as submitted. The City may determine that proposed modifications are so substantial that the public notice of the Application is inadequate and that submission of a new grant of location application is required. Applications that are found incomplete must be supplemented as described above (See Incomplete Applications).

L. Public Hearing and Hearing Record

The City Council Public Facilities Committee will conduct a public hearing on the Application. The hearing record will include, at a minimum, (1) the applicant's Application, including its payment(s) of the application fees and any peer review fee(s); (2) written reports on the Application, if any, submitted by the City Engineer, Commissioner of Public Works and any other City departments; (3) a transcript, audiotape or videotape of the public hearing (the applicant also is free to record the public hearing); (4) proof of notice of the public hearing; (5) evidence that parties required to be notified of the public hearing were timely and properly notified; (6) any supplemental written materials supplied by the applicant at least forty-eight (48) hours prior to the public hearing; (7) materials presented by any member of the public, City officials or a City peer reviewer at the public hearing, which must also be submitted and copies provided to the applicant 48 hours in advance of the hearing; and (8) any additional materials provided by the applicant at the request of the Public Facilities Committee. Materials may include, but are not limited to photographs, mock-ups, videos or written documentation.

If the applicant intends to seek an exception from any City requirement(s) on the ground that any City requirement(s) which regulate of the placement, construction and modification of personal wireless services facilities on the grounds that it would: (1) prohibit or have the effect of prohibiting the provision of personal wireless services; or (2) unreasonably discriminate among providers of functionally equivalent services, or would be unnecessary or unduly burdensome in the context of the particular application and location, the applicant should submit information in support of its position in its application, but in no event later than forty-eight (48) hours prior to the public hearing.

Comment [MSG9]: Violation of the Federal TCA should not be the only basis for seeking an exemption from a City requirement that is unnecessary or overly burdensome as applied to the particular proposed location and application.

M. Written Decision and Statement of Reasons

The Public Facilities Committee will vote on its recommended action, provide a statement of reasons for its recommendations and support its recommendations by reference to the hearing record. It shall submit a report on its vote to the City Council. The City Council will consider the application at its next hearing and issue a written decision in accordance with the requirements of state and federal law. The City Council may adopt and incorporate by reference the recommended action and statement of reasons provided by the Public Facilities Committee or modify the same, supported by a statement of reasons and reference to the hearing record in support of any modification. In the event that the City Council issues its decision after the expiration of any applicable federal “shot clock” date and in the absence of a tolling agreement with an unexpired term as of the date of the City Council’s decision, the City Council shall provide a statement of reasons why additional time was needed to review and act upon an Application.

Comment [MSG10]: Unless there is a tolling agreement by which the applicant agrees to an extension of the time for decision, the City Council should abide by the federal shot clock standards.

An applicant shall be permitted to submit proposed findings of fact and a proposed City Council order based upon the hearing record no later than seven (7) days after the close of the public hearing conducted by the Public Facilities Committee; provided, however that if the exercise of this step would delay a final decision by the City Council, such permission is conditioned upon the applicant’s execution of a tolling agreement not to exceed thirty (30) days.

N. Time Frame for Decisions

Given public notice and hearing requirements, the initial review by the City Engineer, Commissioner of Public Works and other departments, public hearings conducted by the Public Facilities Committee, a separate final hearing and decision by the City Council and other factors that may affect the amount of time reasonably necessary to render a final decision, the City encourages voluntary tolling agreements to extend the time frame for the issuance of a final decision.

Comment [MSG11]: Other jurisdictions routinely decide these applications well within the shot clock standards. Given the proposed process of initial review and report of the agencies within 30 days followed by a committee hearing (the committee meets twice a month) and then City Council decision, it should rarely, if ever, be necessary to exceed the 90 day shot clock limit.

If it becomes apparent that a final decision will not likely be rendered during a period of time presumed reasonable under federal law, the Applicant is encouraged to enter into a written agreement (a “tolling agreement”) with the City to extend the period of time for the City Council’s issuing a formal decision. The presumed reasonable time frame for final decisions under federal law is a rebuttable presumption. The City Council may have valid reasons for needing more time to reach a final decision on a given application. In any such case where more time is needed and there is no tolling agreement, the Public Facilities Committee and/or City Council shall state in writing or as part of the hearing record the reasons why more time is needed to issue a final decision on an Application.

O. Appeals and Reconsideration

An applicant may petition the City Council for reconsideration within thirty (30) days after receipt of a final decision. The City Council may issue a decision on a petition for reconsideration within thirty (30) days of the filing of the petition for reconsideration. A failure of the City Council to act on the petition for reconsideration within such thirty (30) day period shall be deemed a denial of such petition. Any appeals from a final decision by the City Council shall be governed by applicable law.

P. Acceptance of Grant of Location Order with Conditions

Grants of location must be accepted by the applicant as required under Massachusetts General Laws Chapter 166, Section 22. The applicant shall pay the fee for recording the grant of location order as required under the City Code.

IV. SUBSTANTIVE STANDARDS FOR WIRELESS COMMUNICATIONS FACILITIES IN PUBLIC WAYS

These standards provide objective, uniform criteria for the review of grant of location applications for the placement of Wireless Communications Facilities in the public ways (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; and (3) by attachment to a new pole constructed for communications uses.

A. Definitions

Comment [MSG12]: Place definitions in alphabetical order

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

- (1) **Alternative Antenna Structure** means an existing pole or other structure that can be used to support an antenna and is not a Utility Pole or City-owned Infrastructure. Except as otherwise provided for by these Regulations, the requirements for an Alternative Antenna Structure shall be those required in Section 30-18A of the City Code (the wireless zoning ordinance).
- (2) **Antenna Structure** means any structure designed to specifically support an antenna, and/or any appurtenance mounted on such a structure or antenna.
- (3) **Applicant** includes any person or entity submitting an application to install a Personal Wireless Communications Facility.

- (4) **Distributed Antenna System** means a network of spatially separate antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area.
- (5) **Monopole** means a structure composed of a single spire, pole or tower used to support antennas or related equipment and the primary purpose of which is to serve as a support structure for wireless communications facilities.
- (6) **Wireless Communications Facility** means a structure, antenna, pole, tower, equipment, accessory equipment and related improvement used, or designed to be used, to provide wireless transmission of voice, data, images or other information, including but not limited to, cellular phone service, personal communications service, paging and Wi-Fi service.
- (7) **Small Cell Antennas** means an antenna either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area.
- (8) **Tower** means 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 towers. Except as otherwise provided for by these Regulations, the requirements for a Tower and associated antenna facilities shall be those required in Section 30-18A of the City Code (the wireless zoning ordinance).
- (9) **Utility Pole** means an upright pole used to support electric cables, telephone cables, telecommunications cables and related facilities owned and maintained by an electric distribution company or incumbent local exchange carrier which is regulated by the Massachusetts Department of Public Utilities and/or the Massachusetts Department of Telecommunications and Cable. A Utility pole does not include City-owned Infrastructure.
- (10) **Exception** means a grant of relief by the City Council from specific limitations in these Standards.
- (11) **City-owned Infrastructure** means infrastructure including, but not limited to, streetlight poles and traffic signals owned, operated and maintained by the City and located in a public way.
- (12) **Wi-Fi Antenna** means an antenna used to support Wi-Fi broadband Internet access service based on the IEEE 802.11 standard that typically uses unlicensed spectrum to enable communication between devices.

B. Determination of Site Locations

1. **Analysis of Installation Request-** The City Council determines the location of all Wireless Communications Facilities to be located in or on public ways. The City Council will not unreasonably discriminate among providers of functionally equivalent services. The City Council will not take action that prohibits or has the effect of prohibiting (a) the provision of personal wireless service or (b) the ability of any entity to provide any interstate or intrastate telecommunications service.
2. **Sensitive Locations** – Applicants are encouraged to avoid pole locations that would be (a) directly in front of, and in close proximity to, a residence, (b) on a scenic road, (c) ~~in close proximity in front of and on the same side of the street as~~ to an historic building listed on the Massachusetts Historic Register, (d) in an historic district (see below) or (e) at an entry point to a village center. Applicants are encouraged to use existing Utility Poles which do not support existing Wireless Communications Facilities.
3. **Historic Districts-** Applicants are encouraged to avoid pole locations within an historic district. Applicants shall disclose whether a proposed location is within an historic district and what, if, any certificates are needed from an historic district commission. If a certificate is required but not yet issued, a grant of location will be conditioned upon receipt of the required certificate.
4. **Underground Utility Districts-** Wireless Communications Facilities shall not be permitted in an underground utility district and shall be subject to removal pursuant to the procedures established under M.G.L. Chapter 166, §§22A-22N.
5. **Locations Outside of Public Ways-** The placement of Wireless Communications Facilities outside of the public ways is subject to review and approval under the City Zoning Ordinance.

Comment [MSG13]: The City should set up a simplified/streamlined process for grants of location for any proposed installation that is not in one of these “sensitive locations.” That will encourage carriers to locate outside of “sensitive locations” whenever possible, and will allow the City to apply its resources more efficiently by focusing its review on those applications that call for closer scrutiny.

Comment [MSG14]: “Directly in front of” and “in close proximity to” are vague and subjective standards.

Comment [MSG15]: These locations should be mapped or otherwise identified

Comment [MSG16]: This is an inappropriate restriction on all Wireless Communications Facilities. It is obvious that utility pole attachments will not be feasible in a district where there are no utility poles. Other types of Wireless Communications Facilities (mounted to city-owned light poles, buildings, or other structures) will be needed to provide service in those areas. There is no basis for completely prohibiting all types of Wireless Communications Facilities.

C. RF Emissions and Other Monitoring Requirements

In accordance with federal law, the City Council 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. The applicant shall provide proof that the proposed wireless service facilities will comply with FCC RFE regulations. ~~In addition, the applicant will be required to provide to the Commissioner of the Public Works annual emissions testing results in order to establish continuing compliance with FCC RFE regulations.~~

Comment [MSG17]: This requirement is improper and unnecessary. It imposes an undue burden on wireless carriers and amounts to regulation on the basis of RF emissions in violation of TCA §332(c)(7). See FCC 00-408 at paragraph 18. Does the City impose an annual monitoring requirement on antennas attached to utility poles by entities other than personal wireless service providers?

D. Additional Approval Required; Activity that does not Require Approval

Any increase in the number or height of Wireless Communications Facilities components after construction shall be subject to City Council approval in accordance with applicable law. No City Council approval is required for renewing, repairing or replacing the Wireless Communications Facilities as long as they do not significantly increase the height, number or dimensions of the existing Wireless Communications Facilities or significantly decrease ground clearance below the required level. In the event that after a grant of location order and before construction, the position of a Wireless Communications Facilities component needs or is required to be moved, the applicant shall submit any revisions to its plans to the Commissioner of Public Works, the Fire Department and the Inspectional Services Department, which may authorize the change so long as the change does not significantly reduce ground clearance, or significantly increase the height, dimensions or number of the Wireless Communications Facilities. No pole shall be removed or replaced without the written approval of the Inspector of Wires, as provided for under City Code Section 23-9.

F. New Poles

Applications for the construction of new poles are discouraged. Existing Utility Poles should be utilized where available. Any new pole proposed for wireless communications use in excess of 40 feet shall be considered a Monopole and prohibited in the public ways unless an exception is granted by the City Council. An applicant proposing to construct a new pole for wireless communications use must demonstrate that it (or the party which would use the new pole) does not have the option of attaching to an existing Utility Pole.

Comment [MSG18]: The power companies routinely install poles that are 45 and 50 feet high. Does Newton have a general prohibition on utility poles taller than 40 feet or is this requirement singling out poles used for wireless companies, which would be unreasonable and discriminatory?

G. General Standards

All Wireless Communications Facilities that are located within the public ways shall be designed and maintained so as to minimize visual, noise and other impacts on the surrounding community and to avoid any obstruction of the use of public ways, including sidewalks. In order to assist Applicants, the City Council has provided design guidelines which shall be considered in reviewing applications. The design guidelines shall be consistent with these Standards and may provide details, descriptions and examples of acceptable Wireless Communications Facilities attachments, including visual depictions. The design guidelines will be developed by the Commissioner of Public Works and the Planning and Development Director for review by the City Council. In the event of any conflict between the design guidelines and these Standards, these Standards take precedence over the design guidelines.

- (1) Number Limitation-** Unless otherwise authorized by the City Council for good cause shown, only one personal wireless service provider or DAS provider shall be allowed to own, attach and/or operate Wireless Communications Facilities to a

single Utility Pole. This provision does not prohibit a carrier neutral host from allowing one or more wireless service providers to use its Wireless Communications Facilities.

(2) **City-Owned Infrastructure-** No personal wireless service or telecommunications service facilities shall be mounted to City-owned infrastructure located in the public ways, including but not limited to, streetlights and traffic signals, unless authorized in writing by the Commissioner of Public Works and Mayor or her authorized designee.

(3) **Replacement Poles-** If an application requires replacement of an existing Utility Pole in order to accommodate proposed Wireless Communications 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. The replacement of any City-owned pole shall be in accordance with the specifications of the Commissioner of Public Works.

Comment [MSG19]: The utility company, not the wireless carrier, will determine the pole height and size, materials, and style, taking into account all of its needs and its current policies and applicable electrical code and regulations.

(4) **New Monopoles or Poles-** Subject to exceptions under these Standards, no new Monopole or Utility Pole whose primary purpose is to support personal Wireless Communications Facilities shall be installed within the public ways of the City unless authorized by the City Council. Only pole mounted antennas shall be permitted in the public ways. Towers and Monopoles are prohibited in the public ways.

(5) **Exceptions for a New Pole-** An exception shall be required to place a new pole that is not a replacement for an existing pole in a public way. If an exception is granted for placement of a new pole in the public way:

- i. 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, to the extent feasible,~~ with the exception of any existing pole designs that are scheduled to be removed and not replaced. See Section (9)(iii).
- ii. Such new poles that are not replacement poles shall be located at least ninety (90) feet from any existing pole to the extent feasible.
- iii. Such new poles shall be subject to a height limitation of 40 feet unless a taller height is permitted by the City Council.

Comment [MSG20]: The utility company, not the wireless carrier, will determine the pole height and size, materials, and style, taking into account all of its needs and its current policies and applicable electrical code and regulations.

Comment [MSG21]: The power companies routinely install poles that are 45 and 50 feet high. Does Newton have a general prohibition on utility poles taller than 40 feet or is this requirement singling out poles used for wireless companies, which would be unreasonable and discriminatory?

- iv. A new pole justification analysis shall be submitted to demonstrate why existing Utility Poles or locations outside of the public ways cannot be utilized and demonstrating 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 Wireless Communications Facilities.
- v. For all wooden poles, conduit and cables attached to the exterior of poles shall be mounted flush thereto and painted to match the pole.
- vi. A new pole shall not require the replacement of adjacent poles or require the rearrangement of existing facilities of the pole owner, the City or another entity attaching to adjacent poles.

Comment [MSG22]: Why should conduit and cable installed for wireless carriers be subject to this standard when other conduit and cable installed on poles is not

Comment [MSG23]: What is the reason for this restriction? A design that involves replacing adjacent poles and rearranging equipment may be an appropriate solution for the carrier and the City. The applicant should be able to propose such a rearrangement and have it evaluated on its merits.

(6) ADA Requirements

Wireless service facilities shall not interfere with ADA standards and requirements.

(7) Attachment to Utility Poles; Limitations

No such personal Wireless Communications Facilities shall be attached to a Utility Pole 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 the technical needs and service objectives of the applicant, as well as aesthetic and public safety considerations.
- b. **Size of Above Ground Personal Wireless Service Equipment-** 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 the technical needs and service objectives of the applicant, as well as aesthetic and public safety considerations.
- c. **Lowest Point Above Grade-** The operator of Wireless Communications Facilities shall, whenever possible, locate the base of the equipment or appurtenances at a height of no lower than 8 feet above grade. No facilities may be installed at grade without the approval of the Commissioner of Public Works and the City Council. In the event that the City prohibits electric meters on utility poles or

the electric distribution company does not require an electric meter, the operator shall, whenever possible, locate the base of the equipment or appurtenances no lower than 12 feet above grade.

- d. **Height-** The top of the highest point of the Utility Pole shall not exceed 40 feet and the combination of the height of the utility pole and personal wireless service antenna extension shall not exceed 44 feet above ground level.

Comment [MSG24]: To the extent that there are utility poles in the City that are taller than 40 feet, this limitation is unreasonable. A carrier should be allowed to attach to an existing utility pole that is higher than 40 feet.

- e. **Color-** The color of the Wireless Communications 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 City Council. The Wireless Communications Facilities shall have non-reflective materials.

Comment [MSG25]: Why is the City proposing to regulate the color of Wireless Communications Facilities when other equipment on poles may be any color. Verizon Wireless' ability to determine the color of its antennas and equipment is limited by the colors made available by the vendor, and requiring that equipment be painted will add burdensome and unnecessary maintenance obligations.

- f. **Shielding of Wiring-** Any wiring on the pole must be covered with an appropriate cover or cable shield.

- g. **Mounting-** ~~The applicant shall use the least visible equipment possible.~~ Antenna elements and equipment shall be ~~flush-mounted as close to the surface of the pole as to the extent practical and~~ feasible.

- h. **Antenna Panel Covering-** Personal wireless service antenna shall include a radome, cap or other antenna panel covering or shield and if there is a choice of colors, and shall available, the applicants shall use be of a color that blends with the color of the utility pole on which it is mounted. Where practicable, the applicant also should consider the full concealment of its equipment.

Comment [MSG26]: Unclear what this means. The equipment will be visible. For a wooden or metal utility pole, it will not be possible to mount equipment inside the utility pole.

- i. **Signage-** Wireless Communications Facilities shall not have signs ~~Other other~~ than those signs required by federal or state law or by the pole owner. ~~Wireless Communications 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 in force at the time of installation of the wires and cables or any stricter standards required by a pole owner, and TIA/EIA applicable codes.

- k. **Grounding-** The Wireless Communications 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 Wireless Communications 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.
- m. **Wind Loads-** The proposed wireless facilities shall be properly engineered to withstand wind loads required by applicable safety codes and pole owner requirements. An evaluation of high wind load capacity shall include the impact of the proposed attachments on the existing Utility Pole with existing utility facilities and any third-party attachments.
- n. **Obstructions-** Each component part of a Wireless Communications Facility 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 incommode the public's use of the public way. Nor shall any such component obstruct intersection visibility. The Wireless Communications Facility 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 Wireless Communications Facility shall not interfere with snow plowing, side walk clearing, leaf removal or the maintenance of public shade trees. The wireless facility shall not interfere with the pole owner's vegetation management practices and obligations.
- o. **Traffic Safety-** All Wireless Communications Facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic and pedestrian safety and shall not extend outward from a pole by more than two (2) feet from each side of the pole. Wireless Communications Facilities shall not project over the public way or sidewalk (beyond the berm or curb) or otherwise interfere with the

Comment [MSG27]: What is the reason for an absolute prohibition on guy wires/support wires, if needed to structurally support the addition of wireless equipment to an existing pole? Adding antennas and equipment to an existing pole that then needs additional support wires may be a better option from the City's and carrier's standpoint than locating on a different pole that does not require guying.

public use of the public 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 applicant's Wireless Communications Facilities shall not produce any lighting or blinking light that is not required by federal or state law or by an applicable industry safety code.
- q. **Security-** the applicant shall provide adequate security for its Wireless Communications Facilities in accordance with current industry practices and any applicable standards.
- r. **Noise-** The applicant shall comply with any applicable City noise ordinance. In the event that its facilities fail to comply with such ordinance, the applicant shall provide noise suppression equipment as reasonably necessary to bring the facilities into compliance with such ordinance. In addition, the applicant shall provide acceptable assurances that it is capable of promptly shutting down and repairing any equipment that is not in compliance with City noise regulations.
- s. **Vibration-** The applicant shall provide acceptable assurances that it is capable of promptly shutting down and repairing any equipment that vibrates excessively.
- t. **Non-Interference with other Users of Utility Pole-** The applicant and its facilities shall not interfere with the operation and maintenance of any wires, cables or equipment already attached to a utility pole, including but not limited to streetlights and cable, electrical and telecommunications facilities (including any City communications facilities such as fiber optic cables and copper alarm transmission lines). Streetlights already attached to the pole shall not be moved unless required by the pole owner(s), and then only to the extent permitted under any applicable agreement between the pole owner and the City or, absent such applicable agreement, formally consented to by the Commissioner of Public Works. Signage already attached to a pole shall not be moved without the prior written consent of the City department that controls the placement of the signage.

8. Other Requirements

- a. **Expiration of Permit for Non-Use-** The applicant shall pay the fee for recording a grant of location order as provided for under G.L.c.166, §22

and City Code §17-3. If the applicant fails to construct and operate the approved Wireless Communications Facilities within 180 days after such acceptance, the City may notify the applicant of its intent to revoke the grant of location and direct the removal of any unused wireless communications facilities. The applicant shall have the opportunity to cure this failure or provide good cause for the failure based upon factors outside of its control.

- b. **Abandonment and Removal-** Any abandoned or unmarked Wireless Communications Facilities, wires and equipment shall be removed in accordance with City Code §23-14.
- c. **Non-Emergency Repairs-** Non-emergency repairs shall be performed as follows: (1) at least 48 hours' advance notice shall be provided to the Commissioner of Public Works and the Police Department; (2) a police detail may be required; and (3) work shall be performed on weekdays between the hours designated by the Commissioner of Public Works.
- d. **Removal of Utility Pole-**In the event that a utility pole is being removed and replaced by the pole owner(s), the applicant shall transfer the Wireless Communications Facilities to the replacement pole in accordance with the pole attachment agreement(s) between the applicant and the pole owner(s). In the event the pole is being removed by the pole owner(s) and not replaced, the applicant shall ~~remove-relocate~~ its Wireless Communications Facilities to a new location as soon as it is practical to do so and all necessary approvals have been received, and the grant of location allowed for the removed pole location shall then terminate as soon as the applicant's equipment has been relocated. Applicants shall register with and participate in the NJUNs program or any successor program in effect.
- e. **Licenses and Permits-** The applicant must obtain all other permits required by law.
- f. **Performance Bond-** As required under §23-11 of the City Code.
- g. **Other Conditions for Approval-** All Wireless Communications Facilities shall be subject to the following additional conditions of approval, as well as any modification of these conditions or additional conditions of approval deemed necessary by the Commissioner of Public Works, City Wire Inspector or the City Council:
 - (i) **As-Built Drawings-**The applicant shall submit as-built drawings within 30 days after installation of its Wireless Communications

Facilities. As-built drawings shall be in an electronic format acceptable to the City which can be linked to the City's GIS. To the extent practicable, as-built drawings should be able to be incorporated into the GIS layers.

- (ii) **Contact and Site Information-**The applicant shall submit and maintain current at all times basic contact and site information on a form to be supplied by the City. Such information shall include, but is not limited to (a) name, address and 24 hour local or toll-free and cellphone numbers of the applicant, the owner, operator and agent or person responsible for maintenance of the Wireless Communications Facility and (b) the legal status of the owner of the Wireless Communications Facility.

- (iii) **Insurance-** The applicant shall maintain the following insurance:

Commercial General Liability Insurance: Comprehensive liability coverage including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits for such coverage shall be: (1) bodily injury including death, one million dollars (\$1,000,000) for each person, occurrence and two million dollars (\$2,000,000) aggregate; (2) property damage, one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) aggregate.

Comment [MSG28]: There is no basis for requiring this coverage unless the applicant is going on a city-owned pole.

~~Automobile Liability Insurance: Automobile liability coverage with limits no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.~~

Comment [MSG29]: There is no rationale for requiring auto insurance.

~~Worker's Compensation Insurance: Full Workers' Compensation Insurance and Employer's Liability with limits as required by Massachusetts law.~~

Comment [MSG30]: There is no basis for the City to require Worker's Compensation insurance.

To the extent applicable, the City shall be named as an additional insured on all aforementioned insurance coverages as those policies permit. All insurance certificates shall provide that the policies shall not be cancelled without endeavoring to provide the City at least thirty (30) days' prior written notice.

Comment [MSG31]: Unless the installation is going on a City-owned pole, it is not appropriate to require the carrier to have insurance coverage naming the City in order to attach to a pole that is in the right of way.

(iv) ~~Drip Lines of Trees~~ No Wireless Communications Facility shall be permitted to be installed in the drip line of any tree in the public way.

Comment [MSG32]: What is the rationale for this requirement? Wireless facilities are located above ground and this ordinance addresses pole attachments in the ROW.

(+)(iv) **Indemnification-** The applicant must execute an indemnification agreement as a condition for approval of a grant of location. A form of indemnification agreement shall be provided as part of the application form package.

Comment [MSG33]: What is the basis for this requirement? Wireless carriers seeking grants of location should not be subject to any requirements in this regard that do not apply to all other parties receiving grants of location to install poles or attach equipment to existing poles.

(+)(v) **Relocation-** An applicant shall promptly, but in no event more than 120 days ~~of the City's request~~ after the City has approved the relocation of the applicant's facilities and equipment to another nearby pole that will serve its needs, permanently remove and relocate, at no charge to the City, any facilities or equipment if and when made necessary by a change in the grade, alignment or width of any public way, by construction, maintenance or operation of any City facilities, ~~or to protect the public health, safety and welfare. The applicant shall restore any public way to the condition it was in prior to removal and relocation of its facilities or equipment.~~

Comment [MSG34]: Applicant should not have to restore condition of public way if it is being displaced because the City is changing the public way or building a facility where the pole was located.

V. EXCEPTIONS

The City acknowledges that its application of these Procedures and Standards is subject to applicable state and federal laws. The City finds that, due to potential variations in wireless facilities, technical service objectives and changed circumstances over time, a limited exception for proposals in which strict compliance with these Procedures and Standards would conflict with applicable state or federal laws is in the public interest. Therefore, in the event that with respect to a particular application, an applicant requests an exception to and demonstrates that strict compliance with any provision of these Procedures and Standards, as applied to a specific proposed personal wireless services facility, would contravene state or federal law, or is unnecessary or would be unduly burdensome on the applicant in light of any benefit to the City from enforcing the requirement, the City Council may grant an limited, one-time exception from strict compliance with the subject to the provisions of these Procedures and Standards in particular respects. The City Council shall make findings on any request for an exception to these Procedures and Standards in support of the grant or denial of a requested exception.

VI. AMENDMENTS

The City Council may from time to time amend these Procedures and Standards after a public hearing. Any amendment shall apply to any application filed after the date it is approved by the City Council and takes effect, but amendments shall not apply to applications that were previously approved.