



Community Development Department / Planning Division
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MEMORANDUM

TO: Planning Commission

FROM: Sambo Kirkman, Senior Planner

DATE: May 26, 2021

SUBJECT: TA2021-0001 Public Comment Received

Attached is a comment email and attachment provided by Kathy Putt, Crown Castle, dated May 25, 2021 referred to as Attachment E.

Sambo Kirkman

From: Putt, Kathy <Kathy.Putt@crowncastle.com>
Sent: Tuesday, May 25, 2021 4:08 PM
To: Sambo Kirkman
Cc: Verre, Jessica; Trauner, Joshua
Subject: RE: Small Wireless Facilities Regulations
Attachments: Beaverton Policy Document Draft (CC comments).pdf

Sambo, my apologies that this wasn't sent previously. We had prepared comments and unless someone else sent them on our behalf, they never went out. Overall, there are some really good things in here but I think more work needs to be done. In a time when governmental entities are focused on getting more people broadband, this makes deployment a bit more difficult. Anything you can do to make it easier and provide more flexibility, the better. The things that stand out the most for me are probably the volumetric limits imposed on antennas, equipment and cabinets. As a neutral host provider, we will want the ability to place more than 1 carrier and their equipment on each pole wherever possible. It's simply the most efficient way to deploy because you already have fiber and power in place. Collocation also minimizes the proliferation of SWFs on every single pole. To that end, we strongly encourage the ability to utilize the full 28 cf. of equipment allowed by the FCC. We can support 2-3 carriers/pole with both 4G & 5G equipment if you allow us the full volume allowed. Larger (but fewer) cabinets in the ROW can also support more antennas on more poles. I will likely offer testimony tomorrow evening along the same lines as this message. Thank you for the opportunity to provide comments. Please feel free to call me if you have any questions.

Kathy Putt
 Crown Castle
 Government Affairs
 25.236.5677

From: Sambo Kirkman <skirkman@beavertonoregon.gov>
Sent: Monday, May 24, 2021 2:38 PM
To: Phillips, Zach <Zach.Phillips@crowncastle.com>; Ken Lyons <ken.lyons@wirelesspolicy.com>; Kim Allen <kim.allen@wirelesspolicy.com>; colleen.deshazer@verizonwireless.com; alangalloway@dwt.com; alan.bar@verizonwireless.com; timothy.halinski1@t-mobile.com; george.granger.1@att.com; cm9268@att.com; Meridee Pabst <meridee.pabst@wirelesspolicy.com>; Tim_goodman@cable.comcast.com; clindsay@extenetsystems.com; kirk_nord@comcast.com; Rachel Fenton <rfenton@extenetsystems.com>; Paul Slotemaker <pslotemaker@tilsonotech.com>; Putt, Kathy <Kathy.Putt@crowncastle.com>; Verre, Jessica <Jessica.Verre@crowncastle.com>; Listfeld, Chris <Chris.Listfeld@crowncastle.com>; Brian Buswell <Brian.Buswell@pgn.com>; Rob Butenschoen <Rob.Butenschoen@pgn.com>; Kudrna, Darin <disabled-201120-Darin.Kudrna@crowncastle.com>
Cc: Anna Slatinsky <aslatinsky@beavertonoregon.gov>; Megan Thornton <mthornton@beavertonoregon.gov>; Jocelyn Blake <jblake@beavertonoregon.gov>
Subject: RE: Small Wireless Facilities Regulations

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon Everyone,

Meridee Pabst had some questions regarding the format for testimony during Wednesday's Planning Commission Meeting. I thought I would share with the rest of the group. The Planning Commission Meeting will be moved to the

Zoom Webinar format. The following is a link to view the meeting as an attendee: <https://www.zoomgov.com/j/1607831826?pwd=bm1hd2FjTVZaOC9tYldYTFNFYU1adz09>. If the link does not work or you want to view the meeting on your phone use the following information:

Webinar ID: 160 783 1826

Passcode: 999999

Call In: (669)254-5252

Please note if you want to provide testimony you will need to use the “raise hand” button in Zoom or press *9 on your phone. As an attendee you will be able to view the meeting and provide audio testimony. If you have materials you want to present to the Commission during your testimony, please send them to me no later than **9am Tuesday May 25** so that I have ample time to prepare the materials. If you plan to provide written testimony only then you have up until the hearing to email me your testimony. The Code (BDC Section 50.57) identifies up to 5 minutes. The amount of time for testimony is up to the Planning Commission chair, but the same time must be extended to all who wish to provide verbal testimony. This Zoom Webinar link, the agenda, and the staff report are posted on our [PC Agenda’s and Meeting page](#). Feel free to reach out to me if you have any further questions.

Regards,

Sambo Kirkman, AICP

Senior Planner | Current Planning | Community Development

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COVID-19 Update: Please note: I am working remotely/in office at this time. My work hours are: **8-5pm M-F**. The best number to reach me is **503-214-0843**. Response times may be longer than normal as we adapt to remote work.

From: Sambo Kirkman

Sent: Wednesday, May 19, 2021 9:32 PM

To: Phillips, Zach <Zach.Phillips@crowncastle.com>; Ken Lyons <ken.lyons@wirelesspolicy.com>; Kim Allen <kim.allen@wirelesspolicy.com>; colleen.deshazer@verizonwireless.com; alangalloway@dwt.com; alan.bar@verizonwireless.com; timothy.halinski1@t-mobile.com; george.granger.1@att.com; cm9268@att.com; Meridee Pabst <meridee.pabst@wirelesspolicy.com>; Tim_goodman@cable.comcast.com; clindsay@extenetsystems.com; kirk_nord@comcast.com; Rachel Fenton <rfenton@extenetsystems.com>; Paul Slotemaker <pslotemaker@tilsontech.com>; Putt, Kathy <Kathy.Putt@crowncastle.com>; Verre, Jessica <Jessica.Verre@crowncastle.com>; Listfjeld, Chris <Chris.Listfjeld@crowncastle.com>; Brian Buswell <Brian.Buswell@pgn.com>; Rob Butenschoen <Rob.Butenschoen@pgn.com>; Kudrna, Darin <Darin.Kudrna@crowncastle.com>

Cc: Anna Slatinsky <aslatinsky@beavertonoregon.gov>; Megan Thornton <mthornton@beavertonoregon.gov>; Jocelyn Blake <jblake@beavertonoregon.gov>

Subject: RE: Small Wireless Facilities Regulations

Good Evening Everyone,

Below is a link to the staff report and exhibits for Beaverton’s Text Amendment for Small Wireless Facilities. The first hearing will be in front of our Planning Commission on Wednesday May 26 at 6:30. Information on the agenda and hearing can also be found at the Planning Commission link below. If you plan on providing comments you are more than welcome to submit them up to the time of the hearing; however I would recommend that you provide your comments

early. If you can provide me with your comments by Monday, I will get an additional packet out to the Commissioners prior to the hearing so that they may have time to digest your comments. You have any other questions about the materials or the hearing process feel free to contact me.

TA2021-0001 Small Wireless Facilities Text Amendment Staff Report Packet: [City of Beaverton - Proposed Development Projects \(beavertonoregon.gov\)](#)

Planning Commission Agenda: [Agendas & Minutes | Beaverton, OR - Official Website \(beavertonoregon.gov\)](#)

Regards,

Sambo Kirkman, AICP

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From: Sambo Kirkman

Sent: Thursday, April 15, 2021 7:37 PM

To: Phillips, Zach <Zach.Phillips@crowncastle.com>; Ken Lyons <ken.lyons@wirelesspolicy.com>; Kim Allen <kim.allen@wirelesspolicy.com>; colleen.deshazer@verizonwireless.com; alangalloway@dwt.com; alan.bar@verizonwireless.com; timothy.halinski1@t-mobile.com; george.granger.1@att.com; cm9268@att.com; Meridee Pabst <meridee.pabst@wirelesspolicy.com>; manske.k@hughes.net; Tim_goodman@cable.comcast.com; clindsay@extenetsystems.com; kirk_nord@comcast.com; Rachel Fenton <rfenton@extenetsystems.com>; Paul Slotemaker <pslotemaker@tilsonotech.com>; Putt, Kathy <Kathy.Putt@crowncastle.com>; Verre, Jessica <Jessica.Verre@crowncastle.com>; Listfjeld, Chris <Chris.Listfjeld@crowncastle.com>; Brian Buswell <Brian.Buswell@pgn.com>; Rob Butenschoen <Rob.Butenschoen@pgn.com>; Kudrna, Darin <Darin.Kudrna@crowncastle.com>

Subject: Small Wireless Facilities Regulations

Hello Everyone,

Attached is the draft copy of the City's Small Wireless Facilities Regulations as well as the draft update to the Beaverton Development Code removing Small Wireless Facilities and other updates. We have noticed these changes to the Department of Land Conservation and Development to begin the Text Amendment process. We are preparing to notice and schedule our first meeting with the Planning Commission. As we begin the formal steps, please note that these documents are drafts. We expect there will be feedback from this group as well as from the community through the amendment process. You are more than welcome to contact me with your feedback prior to the hearing and of course to participate in the hearing process. I will include the group in the notices as they go out.

Regards,

Sambo Kirkman, AICP

Senior Planner | Current Planning | Community Development
City of Beaverton | PO Box 4755 | Beaverton, OR 97076-4755
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CITY OF BEAVERTON	Policy No. [reserved]
CITY COUNCIL POLICY	Adopted: [date] Revised:
GENERAL SUBJECT: SMALL WIRELESS FACILITIES	

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) On September 27, 2018, the Federal Communications Commission (“FCC”) adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the “*Small Cell Order*”), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act. Numerous legal challenges to the *Small Cell Order* were raised, but its regulations became effective while such challenges are pending. On August 12, 2020, the United States Court of Appeals for the Ninth Circuit invalidated many aesthetic restrictions in the *Small Cell Order* but largely upheld the other restrictions. *Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020). The court specifically invalidated the requirements that aesthetic regulations be objective and no more burdensome than those applied to other infrastructure deployments. See *id.* at 1039–42. Although municipalities may exercise reasonable discretion over small wireless facilities, they must do so on an expedited basis to meet the short shot clock limits. Importantly, the Ninth Circuit’s decision remains subject to further appeals that could stretch well into 2021 and even into 2022. Although the City of Beaverton opposes the *Small Cell Order* and the FCC’s blatant overreach, the City recognizes the practical reality in establishing clear and concise processes and standards to address how installation of these facilities are to occur within the City. Accordingly, the City Council adopts this Policy as a means to accomplish such compliance that can be quickly amended or repealed by resolution in the future without the need to amend the City’s municipal code. This policy document is to address small wireless facilities within the City’s public rights-of-way and on private property.
- (b) The City of Beaverton intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City’s territorial boundaries, consistent with and to the extent permitted under federal and Oregon state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City’s local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Policy is also intended to reflect and promote the community interest by: (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City’s visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and

related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

- (c) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications 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 wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or Oregon state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the City's objectively reasonable and actual cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or Oregon law.

SECTION 1.2. GENERAL DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. § 153 as may be amended or superseded, and, terms that still remain undefined will have their ordinary meanings. If any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
- (b) **Defined Terms.**
- (1.) **"Antenna"** means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. (ADD FCC HPERLINK)
- (2.) **"Antenna Equipment"** means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded. (ADD FCC HPERLINK)
- (3.) **"Antenna Facility"** means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded. (ADD FCC HPERLINK)
- (X) **"approval authority"** means the City official responsible for reviewing applications for small wireless facilities permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy. The approval authority for applications in connection with small wireless facilities shall be the Director or their designee.

- (X) “**arterial**” means a roadway designed to interconnect and support principal arterials and freeways. They link major commercial, residential, industrial, and employment areas. Arterials are typically spaced about one mile apart to assure access to through routes and to reduce the incidence of traffic using collectors or local streets in lieu of a well-placed arterial street. The term “arterial” as used in this Policy is defined in the City of Beaverton Comprehensive Plan, Transportation Element.
- (X) “**batched application**” means more than one application submitted at the same time.
- (X) “**collector**” means a roadway designed to balance access and circulation within residential, commercial, and industrial areas. Collectors differ from arterials in that they provide circulation within the city and distribute trips onto neighborhood routes and local streets. The term “collector” as used in this Policy is defined in the City of Beaverton Comprehensive Plan, Transportation Element.
- (X) “**collocate**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded. (ADD FCC HPERLINK)
- (X) “**concealed**” or “**concealment**” means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include but are not limited to: (1) facade or rooftop mounted pop-out screen boxes;(2) antennas mounted within a radome above a streetlight; (3) equipment cabinets painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.
- (X) “**decorative pole**” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
- (X) “**FCC**” means the Federal Communications Commission or its duly appointed successor agency.
- (X) “**FCC Shot Clock**” means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended or superseded.
- (X) “**local streets**” are designed to have the sole function of providing access to adjacent land. Local street design deliberately discourages through traffic and is important to neighborhood identity. The term “local streets” as used in this Policy is defined in the City of Beaverton Comprehensive Plan, Transportation Element.
- (X) “**ministerial permit**” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City’s departments.

- (X) “**neighborhood routes**” are designed to be longer than local streets and provide connectivity to collectors or arterials. Because they have greater connectivity, they generally have more traffic than local streets and are used by residents to get into and out of their neighborhoods. The term “neighborhood routes” as used in this Policy is defined in the City of Beaverton Comprehensive Plan, Transportation Element.
- (X) “**personal wireless services**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded. (ADD FCC HPERLINK)
- (X) “**personal wireless service facilities**” means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded. (ADD FCC HPERLINK)
- (X) “**Pole**” means a type of structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.
- (X) “**principal arterial**” means streets that are designed to serve to connect neighboring cities and urban areas. They are of regional significance and often of statewide importance as well. The term “principal arterial” as used in this Policy is defined in the City of Beaverton Comprehensive Plan, Transportation Element.
- (X) “**Rights-of-Way (ROW)**” means and includes, the space in, upon, above, along, across, over or under a street identified as a local, collector, neighborhood route, arterial, principal arterial, or freeway in the City’s Comprehensive Plan, Transportation Element.
- (X) “**RF**” means radio frequency or electromagnetic waves.
- (X) “**Section 6409**” means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded. (ADD FCC HPERLINK)
- (X) “**small wireless facility**” or “**small wireless facilities**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded. (ADD FCC HPERLINK)
- (X) “**Strand Mounted**” means small wireless antenna(s) and equipment attached directly to the wire hanging between two utility poles.
- (X) “**Structure**” means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of service).
- (X) “**support structure**” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

- (X) **“tower”** means a structure, tower, pole or mast solely dedicated to support one or more wireless communication antenna systems, including but not limited to, guyed towers, lattice towers and monopoles; provided, such term does not include a pole as defined within this Policy, a building or electric transmission structures.
- (X) **“Wireless Communication Facility”** A non-staffed facility for the transmission of radio frequency (RF) signals, usually consisting of an equipment shelter, cabinet or other enclosed structure housing electronic equipment; a support structure; and antenna systems or other transmission and reception devices. This includes cellular towers, cellular antennas, satellite dishes, and microwave dishes.

DRAFT

SECTION 2.SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

(a) Applicable Facilities.

- (1) The development, installation, and modification of the following uses are subject to the provision set forth in this policy:
 - (A) Collocation of a small wireless facility; and
 - (B) Modification of an existing pole to be used for a small wireless facility that does not result in the replacement of the pole.
 - (C) Replacement of an existing pole that is required to accommodate a small wireless facility.
 - (D) Placement of a new pole to be used for a small wireless facility.
- (2) **Small Wireless Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the public rights-of-way or on private property within the City's jurisdictional and territorial boundaries.
- (b) **Small Cell Permit.** A "small cell permit," subject to the approval authority's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement structure.
- (c) **Request for Approval Pursuant to Section 6409.** Notwithstanding anything in the Policy to the contrary, requests for approval to collocate, replace or remove transmission equipment on an existing wireless tower or base station submitted pursuant to Section 6409 will be subject to the current FCC rules and regulations for "eligible facilities requests" as defined by FCC and as may be amended or superseded.
- (d) **Other Permits and Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies prior to submittal of a small wireless facility application.

SECTION 2.2. SMALL CELL PERMIT APPLICATION REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** All applications for a small wireless facility proposed must include all the information and materials required in this Section 2.2(a).
- (1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form that includes a checklist of required materials to be provided with the application form.
 - (2) **Application Deposit.** The applicant shall submit the applicable small cell permit application deposit established by City Council resolution. Batched applications must include the applicable small cell permit application deposit for each small wireless facility in the batch.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by an Oregon licensed or registered engineer, that depicts all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:
 - (i) contain cut sheets identifying the technical specifications for all existing and proposed antennas and antenna equipment, which includes without limitation the manufacturer, model number and physical dimensions;
 - (ii) for projects within the right-of-way or a private street, identify all structures in the right-of-way within 500 lineal feet from the proposed small wireless facility and call out such structures' overall height above ground level
 - (iii) for projects on private property, identify all structures within 50 feet of the property line
 - (iv) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and
 - (v) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
 - (4) **Site Survey.** The applicant shall submit a survey prepared, signed and stamped by an Oregon licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures

within 75 feet from the proposed facility location, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and, below-grade utilities, and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least two vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately less than 50 feet from the proposed support structure or location.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standards in this policy and all the facts that allow the City to conclude the standards will be met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include: (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in Section 2.4(c).
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer or qualified employee of the applicant acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and Oregon law to provide the services and construct the small wireless facility proposed in the application.
- (9) **Site License Agreement.** For any small wireless facility proposed to be installed


on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit a partially-executed site license agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City's form site license agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site license agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's site license agreement shall be an independently sufficient basis to deny the application.

- (10) **Owner's Authorization.** Any small wireless facility proposed to be installed on any real property outside of the right of-way is subject to the provisions for owner authorization in BDC. If the owner is a public or other utility or joint pole association, the applicant may submit authorization reasonably acceptable to the Director.
- (b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy that is subject to the approval authority's review. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.3 SMALL CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this Section 2.3(a).
 - (1) **Pre-Submittal Conferences.** The City strongly encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve small wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, potential applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such draft applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the potential applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
- (b) **Application Completeness Review.** Staff will evaluate the application submittal

to determine if all the required materials are provided. If the application is determined to be incomplete, staff will notify the applicant no more than 10 days from the submittal of the application of the materials needed to complete the application or as required by the FCC. If the applicant is notified that the application is incomplete on its initial submittal, then the FCC shot clock restarts on the date the supplemental submission is provided to the City. After the first supplemental submission, the FCC shot clock will toll if the supplemental submission did not provide the information requested in the City's original notification that the application was incomplete.

- (c) ~~**Applications Deemed Withdrawn.**~~ To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within 60 calendar days after the approval authority deems the application incomplete in a written notice to the applicant. The approval authority, in the approval authority's discretion, may grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 60th day that shows good cause to grant the extension. Good cause for an extension shall include, without limitation, delays due to circumstances outside the applicant's reasonable control. The cost of City staff review time, or \$100, whichever is greater will be assessed against the deposit provided by the applicant. and the remainder of the deposit refunded. As used in this Section 2.3(c), a "substantive response" must include the materials identified as incomplete in the approval authority's notice. 
- (d) **Batched Applications.** Applicants may submit batched applications; provided, however, that the batch must contain all the required elements for a complete application for each facility included in the batch.
- (e) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications subject to the approval authority's review, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.4. APPROVALS AND DENIALS; NOTICES

- (a) **Public Notice.** Prior to any approval, conditional approval or denial, public notice shall be mailed to all properties and record owners of properties within 500 feet from the project site measured laterally in both directions and on both sides of the street.
 - (1) The notice must contain the following:
 - i. Case file number for the application
 - ii. General project description including location;

- iii. The applicant's identification and contact information as provided on the application submitted to the City;
 - iv. contact information for the approval authority;
 - v. A statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the findings in Section 2.4.c and standards in Section 2.6 and Section 2.7; and
 - vi. A statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review. Notice is to be mailed approximately seven (7) days once the submittal package is deemed complete.
 - vii. A statement that interested parties can submit written comments, but, to be considered, the City must receive those comments no later than the comment closing date, which is a specific date established by the Director and which is approximately twenty eight (28) calendar days from the date the application is determined to be or deemed complete. The comment closing date shall be listed in boldface type.
 - viii. A statement that the decision shall be made after the comment closing date.
- (2) Projects to be placed on a preferred location utilizing a pre-approved design are exempt from Section 2.4.a.1. However, prior to construction of the facility the applicant shall conduct public outreach to include the following:
- (i) Comment period will be a minimum of two weeks and must occur prior to construction.
 - (ii) The notification will be on applicant's letterhead.
 - (iii) The applicant will mail the notification to all properties and owners of properties within 500' of the proposed site at least 3 days prior to the comment period.
 - (iv) The notification will contain a deadline for comments, description of the installation, a map of the location labeled with street names, and before and after photo simulations of the site.
 - (v) The notification will include the name, direct telephone number, and email address of an applicant contact. The notification will direct the public to submit or direct any comments to the applicant contact. The applicant contact must be an employee of the applicant and must be available to answer questions, orally and in writing, from the public. The applicant may designate a consultant knowledgeable with the project to answer questions so long as the employee is copied on written communications.
 - (vi) Within 2 months of installation, a consolidated log of received comments and complaints must be submitted to the City.
 - (vii) Documentation of the outreach process must be kept for one year after construction of the site and must be made available upon City request.

- (b) **Administrative Review.** Not less than 10 calendar days after the public notice required in Section 2.4(a), the approval authority shall approve, conditionally approve or deny a complete and duly filed small cell permit application without a public hearing.
- (c) **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for a small cell permit when the approval authority finds:
- (1) the proposed project meets the definition for a “small wireless facility” as defined by the FCC or the design criteria for a strand-mounted facility in this Policy;
 - (2) the proposed project would be in the most preferred location within 500 feet from the proposed facility location in any direction or the applicant has demonstrated with substantial evidence in the written record that no other, more preferred location(s) within 500 feet would be technically feasible or that no other, more preferred location within 500 feet is available;
 - (3) the proposed project involves a lesser-preferred design for the pole, antenna, or antenna equipment, the applicant has demonstrated with substantial evidence in the written record that no other preferred design would be technically feasible or available based on the surrounding area and the requirements of the carrier;
 - (4) the proposed project does not materially and demonstrably interfere with the safe operation of traffic control equipment;
 - (5) the proposed project, including without limitation its appearance and operation, would not be materially adverse to public peace, health, safety, comfort or general welfare;
 - (6) the proposed project is consistent with any applicable City plan, and would not be materially detrimental to the use of surrounding properties or improvements;
 - (7) The proposed project will not unreasonably impact visual and aesthetic continuity among other like facilities, and it can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area.
 - (8) the proposed project does not materially and demonstrably interfere with sight lines or clear zones for transportation or pedestrians;
 - (9) the proposed project does not materially fail to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;

- (10) the proposed project would not be located on a prohibited support structure identified in this Policy;
 - (11) the proposed project complies with all applicable design standards in this Policy;
 - (12) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.; and
 - (13) all public notices required for the application have been given.
- (d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or Oregon laws, nothing in this Policy is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Policy.
 - (e) **Decision Notices.** The approval authority shall notify the applicant by written notice of its decision on the small cell permit application within five calendar days after its decision, or before the FCC Shot Clock expires, whichever occurs first. If the approval authority denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
 - (f) **Appeals.** Decision by the approval authority shall be subject to an administrative appeal to the City Manager.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority for a small cell permit, all small cell permits issued under this Policy shall be automatically subject to the conditions in this Section.
 - (1) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
 - (2) **Build-Out Period.** This small cell permit will automatically expire 12 months from the approval date (the "build-out period") unless construction of the small cell facility is complete; provided that, the post installation certification that is required in subsection 2.5(a)(3). The City may agree to extend the build-out period for one 6-month period if good cause is determined. If the does not extend the build-out period, and if it expires, the permittee must resubmit a complete application, including all application fees, for the same or substantially

similar project and obtain a second approval before beginning construction.

- (3) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at small wireless facility within 72-hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred. The permittee will provide the City with annual updates of their active small wireless facility sites within the City. The documentation shall be in the form of a GIS data layer.
- (4) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Beaverton Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Beaverton Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (5) **Adverse Impacts on Other Properties.** The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Beaverton Code. The approval authority may issue a stop work order for activities that violate this condition in whole or in part.
- (6) **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in Beaverton Code 4.15.
- (7) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in

connection with the small cell permit (collectively, "records"). ~~If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee.~~ The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that ~~hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and~~ complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (8) **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Beaverton Code. In the event that neither the permittee nor the owner complies with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee and owner shall be jointly and severally liable for all **actual and reasonable** costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (9) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (10) **Cost Reimbursement.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the small wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all **actual and reasonable** costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the

permittee shall have the obligation to reimburse City for all such **actual and reasonable** costs 30 days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee. The City shall refund to the applicant any unused application deposit funds within 30 days of its issuance of the permit.

- (b) **Conditions for Small Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small wireless facilities in the public rights-of-way issued under this Policy shall be automatically subject to the conditions in this Section 2.5(b) and the requirements in BC 4.15.
- (1) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, but subject to any applicable laws, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, if technically feasible, at approximately the same time. This undergrounding requirement excludes the antennas and any approved electric meter. Antenna equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- (2) **Electric Meter Upgrades.** If the commercial electric utility provider accepts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (c) **Modified Conditions.** The City Council authorizes the approval authority to modify, add or remove conditions to any small cell permit as the approval authority deems necessary or appropriate to: (1) protect and/or promote the public health, safety and welfare; (2) tailor the standard conditions to the particular facts and circumstances associated with the deployment; and/or (3) memorialize any changes to the proposed deployment needed for compliance with the Beaverton Municipal Code, this policy, generally applicable health and safety requirements and/or any other applicable laws. To the extent required by applicable FCC regulations, the approval authority shall take care to ensure that any different conditions applied to small wireless facilities are no more burdensome than those

applied to other infrastructure deployments.

SECTION 2.6. LOCATION PREFERENCES

- (a) All small wireless facilities shall be located to avoid any physical or visual obstruction to pedestrian or vehicle traffic, or in any manner create safety hazards to pedestrians, bicyclist or motorists.
- (b) All small wireless facilities shall be positioned to not encroach or effectively narrow the clear path of any pedestrian, bicycle or roadway facility unless approved by the City Engineer.
- (c) All small wireless facilities are prohibited on historic or ornamental streetlight poles and traffic signal poles.
- (d) With exception to small wireless facilities, all other Wireless Communication Facilities are prohibited in the public rights-of-way

Preface to Location Preferences. This subsection (a) provides guidance as to how to interpret and apply the location preferences in this Section 2.6. To better assist applicants and decisionmakers understand and respond to the community's aesthetic preferences and values, subsections d) and e) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in ordered hierarchies. Applications that involve lesser-preferred locations or structures may be approved so long as the applicant demonstrates by substantial evidence in the written record that either: (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible or unavailable. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.

- (e) **Locations in the Public Rights-of-Way.** The City prefers small wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
 - (1) locations within commercial, multiple use or industrial districts on or along principal arterials and arterials;
 - (2) locations within commercial, multiple use or industrial districts on or along collectors;
 - (3) locations within commercial, multiple use or industrial districts on or along neighborhood routes;
 - (4) locations within commercial, multiple use or industrial districts on or along local streets;
 - (5) locations within residential districts on or along principal arterials and

arterials;

- (6) locations within residential districts on or along collectors;
 - (7) locations within residential districts on or along neighborhood routes;
 - (8) locations within residential districts on or along local streets; and
 - (9) locations within the City's Historic or Preservation Districts or Overlay Districts
- (f) **Locations Outside the Public Rights-of-Way.** The City prefers small wireless facilities outside the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) Utility easements (for which setbacks do not apply);
 - (2) City- owned / public agency- owned property;
 - (3) Parcels within industrial zones;
 - (4) Parcels within commercial zones.
 - (5) Parcels within multiple-use zones.
 - (6) Parcels within residential zones.
- (g) **Support Structures in the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing or replacement streetlight poles;
 - (2) existing or replacement wood utility poles;
 - (3) new, non-replacement streetlight poles;
 - (4) new, non-replacement poles for small wireless facilities;
 - (5) other street furniture, such as signs and bus shelters.
- (h) **Support Structures Outside the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures outside the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing towers that do not require replacement.
 - (2) existing buildings or other non-tower structures previously approved for use

- as a support structure for wireless communications facilities;
- (3) other existing or replacement buildings, utility poles, parking lot light standards, or non-tower structures;
 - (4) replacement towers;
 - (5) new, non-replacement towers for small wireless facilities;
- (i) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not:
- (1) decorative poles;
 - (2) traffic signals, signs, poles, cabinets and related devices;
 - (3) any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;
 - (4) new, non-replacement wood poles.
- (j) **Additional Placement Requirements.** In addition to all other requirements in this Policy, small wireless facilities, other infrastructure deployments and all related equipment and improvements shall to the extent feasible:
- (1) When installing a new pole or other non-replacement support structure, be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - (2) not be placed directly in front of any ground-level door;
 - (3) not be placed directly in front of any first- or second-story window;
 - (4) not be placed within any sight distance triangles at any intersections;
 - (5) not be placed in any location that obstructs views of any traffic signs or signals;
 - (6) not be placed in any location that obstructs illumination patterns for existing streetlights;
 - (7) for new, non-replacement small wireless facility, must be placed at least 10 feet away from any driveway or established pedestrian pathway between a residential structure and the public rights-of-way; and
 - (8) for new, non-replacement small wireless facility, must be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency

responder facilities.

- (k) **Replacement Pole Locations.** All replacement poles must be: (1) located as close to the removed pole's location as feasible; (2) reasonably aligned with the other existing poles along the public rights-of-way; and (3) compliant with all applicable standards and specifications issued by the Director, which may include, without limitation, requirements related to aesthetics, materials and safety.

SECTION 2.7. DESIGN STANDARDS

(a) General Standards.

- (1) **Concealment.** All small wireless facilities must be designed to resemble something other than a wireless facility whenever **reasonable and** technically feasible and concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses.
- (2) **Noise.** Small wireless facilities and all antenna equipment and transmission equipment must comply with all applicable noise control standards and regulations in Beaverton Code Chapter 5.15, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- (3) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy. Any light beacons or lightning arresters shall be included in the overall height calculation.
- (4) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless:
 - (A) Such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and
 - (B) For projects within the right-of-way and private streets, the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Where applicable, landscape maintenance must be performed in accordance Beaverton Code Sections 5.05.101 and

5.05.102, as may be amended or superseded. In addition, all landscaping shall be maintained in a neat and clean condition and kept well-manicured and sufficiently watered. Dead vegetation and litter shall not be allowed to gather. The replacement of dead trees and other vegetation shall be made in conformance with the approved landscaping plan within a reasonable period.

- (C) For project on private property, the applicant submits and adheres to a landscape maintenance plan consistent with the standards established in Section 60.05.25 of the Beaverton Development Code.
- (5) **Site Security Measures.** To prevent unauthorized access, theft, vandalism, attractive nuisance or other hazards, reasonable and appropriate security measures, such as locks, removable climbing pegs and anti-climbing devices, may be approved. Security measures shall be designed and implemented in a manner that enhances or contributes to the overall concealment, and the approval authority may condition approval on additional concealment elements to mitigate any aesthetic impacts, which may include, without limitation, additional landscape features. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures. Cabinets and equipment shrouds must be kept secured to prevent unauthorized access. Alarm systems shall not include any audible sirens or other sounds.
- (6) **Signage; Advertisements.** All small wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a 24-hour emergency toll-free number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations. No other advertising, branding or other signage is allowed unless approved by the Director.
- (7) **Secondary Power Sources.** The approval authority may approve secondary or backup power sources on a case-by-case basis. The approval authority shall not approve any permanent diesel generators within the public rights-of-way or at any other location or within 200 feet from any residence; provided, however, the approval authority may approve sockets or other connections used for temporary backup generators.
- (8) **Street Parking.** Small wireless facilities and any associated antenna equipment or other improvements shall not reduce any street parking spaces within the public rights-of-way.
- (9) **Fire Safety.** All small wireless facilities shall include (A) a power shut off immediately accessible to fire service personnel, through a Knox box or similar rapid-access system approved by Tualatin Valley Fire & Rescue (TVF&R)], upon arrival at the scene of a fire and/or anticipated power surge due to power being turned off or on for any reason; (B) surge protection devices capable of

mitigating a direct or partial direct lightning discharge; (C) surge protection devices capable of mitigating significant electrical disturbances that may enter the small wireless facility via conductive cables; (D) at least one-hour fire resistant interior surfaces to be used in the composition of all structures; and (E) monitored automatic fire notification and extinguishing systems for all small wireless facilities as approved by TVF&R or applicable building code standards.

- (10) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).

(b) Small Wireless Facilities in the Public Right-of-Way.

- (1) **Overall Height.** Small wireless facilities are not to exceed a height of 40 feet or 10 percent taller than the existing pole whichever is greater. Exceptions to this height restriction require documentation from the pole owner showing the additional height is required for safety regulations or practices.

(2) Antennas.

- (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed either placed internal to the pole or within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.

- (B) **Antenna Volume.** Each individual antenna or antenna enclosure may not exceed three cubic feet in volume. The total maximum number of antennas permitted on the small cell facility are based on the pole type and the mounting of the antennas.

- (C) **Mounting Requirements.** The mounting requirements are based on the following pole types, preferences ordered from most preferred to least preferred:

1. **Streetlight**

- a. Radomes or shrouds for pole-top antennas shall not exceed more than 36 inches or 2.5 times the diameter of the base of the pole, whichever is less.
- b. Antennas shall be placed internal to the pole or affixed to the top of the pole. Mounting arms affixing the antenna to the side of the pole are prohibited, unless approved as part of a pre-approved design under this Policy.
- c. All wires connecting the antennas to the pole shall be placed

- internal to the supporting pole or shrouded.
 - d. Antennas within line of sight of one another must be of a substantially similar configuration, design and finish to promote visual and aesthetic continuity among streetlights in the public rights-of-way.
- 2. Wood Utility Pole
 - a. For antennas affixed to the top of the pole, radomes or shrouds for pole-top antennas shall not exceed more than 36 inches or 2.5 times the diameter of the base of the pole, whichever is less.
 - b. Antennas that are mounted on the pole shall be mounted as flush to the pole as technically feasible and allowed by the pole owner; however, no portion of the antenna shall extend more than 3 feet from the pole. Each bracket or extension arm shall be used for only one antenna.
 - c. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within one or more shrouds that cover the antenna, mounting hardware and cables.
 - d. If the applicant demonstrates that additional separation is required for compliance with applicable health and safety regulations the approval authority may permit the additional spacing. Any modification shall be narrowly tailored to meet the minimum requirements under such health and safety regulations.
 - e. No more than five antennas shall be permitted on one utility pole by one carrier.
 - f. antennas within line of sight of one another must be of a substantially similar configuration, design and finish to promote visual and aesthetic continuity among wood utility poles in the public rights-of-way.
- 3. Other Structures. Structures other than streetlights, utility poles, and single-use poles:
 - a. For antennas affixed to the side of a structure not identified above, the mounting arms are not to exceed 12-inches and shall be used for only one antenna.
 - b. The antenna and antenna mount connecting the antenna to the structure shall be placed within a shroud or designed to match or be compatible with the supporting structure.
 - c. All wires connecting the antennas to supporting equipment and supporting structure shall be placed internal to the structure or shall be placed
- 4. Single-Use Pole
 - a. Antennas and its mounting shall not exceed the diameter of the supporting structure.
 - b. Antennas shall be placed internal to the pole or affixed to the top of the pole.

- c. Mounting arms affixing the antenna to the side of the pole are prohibited, unless approved as part of a pre-approved design under this Policy.
- d. All equipment and wires connecting the antennas shall be placed internal to the supporting pole.

(3) Antenna Equipment.

(A) Installation Preferences. The installation preference of all non-antenna equipment is based on the following pole types, with antenna equipment preferences ordered from most preferred to least preferred. The following are specific design standards based on pole type:

1. Streetlight

- a. Underground: Size restriction based on ROW space available.
- b. Internal to the pole: size restricted only by the available space internal to the pole.
- c. Integrated into base of the pole
 - i. Height of base not to exceed 6 feet (excluding any decorative transition between the base enclosure and the pole).
 - ii. Width of the base shall not exceed 24 inches and shall provide a transition from the base to the pole.
 - iii. Base to match in color and material to the pole unless a different color or decoration is approved by the Director.
- d. External to the pole: Only if it is determined by the City Engineer the location of the facility requires a breakaway pole, then equipment is permitted on the exterior of the pole, when the following standards are met:
 - i. Total cabinets installed shall not exceed 17 cubic feet in volume.
 - ii. Cabinets shall be mounted no further than 6-inches from the supporting structure. The width or depth of the cabinet shall not exceed 36 inches.
 - iii. Minimum clearance of seven (7) feet from the existing grade or as required by the pole owner whichever is greater.
 - iv. All cables not placed in equipment cabinet shall be placed in conduits located no further than 6-inches from the supporting structure and colored to match the supporting structure.

2. Wood Utility Pole

- a. Underground: Size restriction based on ROW space available.
- b. On the pole: All antenna equipment, excluding cabling connecting the antenna to the antenna equipment, shall be placed within cabinets and meet the following:

- i. Total cabinets installed shall not exceed 9 cubic feet in residential areas and 17 cubic feet in non-residential areas in volume.
 - ii. Cabinets shall be mounted no further than 6-inches from the supporting structure. The width or depth of the cabinet shall not exceed 36 inches)
 - iii. Minimum clearance of seven (7) feet from the existing grade or as required by the pole owner whichever is greater.
 - iv. All cables not placed in equipment cabinet shall be placed in conduits located no further than 6-inches from the supporting structure and colored to match the supporting structure.
- c. Ground mounted equipment is permitted in the industrial zone if adequate ROW is available and the location does not adversely affect pedestrian, bicycle, and vehicle circulation.
 - d. All wires connecting the antennas, antenna equipment and the supporting pole shall be placed in conduit and match in color to the supporting pole.

3. Single-Use Pole

- a. Underground: Size restriction based on ROW space available.
- b. Internal to the pole: size restricted only by the available space internal to the pole.
- c. Integrated into base of the pole
 - i. Height of base not to exceed 6 feet (excluding any decorative transition between the base enclosure and the pole).
 - ii. Width of the base shall not exceed 24 inches and shall provide a transition from the base to the pole.
 - iii. Base to match in color and material to the pole unless a different color or decoration is approved by the Director.
- d. External to the pole: Only if it is determined by the City Engineer the location of the facility requires a breakaway pole, then equipment is permitted on the exterior of the pole, when the following standards are met:
 - i. Total cabinets installed shall not exceed 17 cubic feet in volume.
 - ii. Cabinets shall be mounted no further than 6-inches from the supporting structure or the minimum necessary to comply with safety standards and pole owner requirements. The width or depth of the cabinet shall not exceed 36 inches)
 - iii. Minimum clearance of seven (7) feet from the existing grade or as required by the pole owner whichever is greater.
 - iv. All cables not placed in equipment cabinet shall be placed

in conduits located no further than 6-inches from the supporting structure or the minimum necessary to comply with safety standards and pole owner requirements and colored to match the supporting structure.

4. Other Structures
 - a. Underground: Size restriction based on ROW space available.
 - b. Internal to the pole: size restricted only by the available space internal to the pole.
 - c. Integrated into base of the pole
 - i. Height of base not to exceed 5 feet
 - ii. Width of the base shall not exceed 20-inches and shall provide a transition from the base to the pole.
 - iii. Base to match in color and material to the pole.
 - d. On the pole: All antenna equipment, excluding cabling connecting the antenna to the antenna equipment, shall be placed within cabinets and meet the following:
 - i. Total cabinets installed shall not exceed 17 cubic feet in volume.
 - ii. Cabinets shall be mounted no further than 6-inches from the supporting structure. The width or depth of the cabinet shall not exceed 36 inches)
 - iii. Minimum clearance of seven (7) feet from the existing grade or as required by the pole owner whichever is greater.
 - iv. All cables not placed in equipment cabinet shall be placed in conduits located no further than 6-inches from the supporting structure and colored to match the supporting structure.
 - e. Ground mounted is permitted in the industrial zone if adequate ROW available and the location does not affect pedestrian, bicycle, and vehicle circulation.

(B) **Undergrounded Antenna equipment.** All undergrounded antenna equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

(C) **Pole-Mounted Antenna equipment.** All pole-mounted antenna equipment must be installed no more than 6-inches from the pole or the minimum necessary to comply with safety standards and pole owner requirements. Equipment may be placed in more cabinets or shrouds to minimize the

overall visual profile if the total maximum size allowed per pole is not exceeded and provided that the disconnect switch or other equipment for which access is needed for safety purposes, need not be enclosed. If any applicable health and safety regulations require a greater distance between the pole and antenna equipment, the maximum offset permitted between the antenna equipment and the pole shall be the minimum offset required by such regulations. Documentation shall be provided identifying the additional offset. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match or be compatible with the underlying support structure.

- (D) **Base-Mounted Antenna equipment.** All base-mounted antenna equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- (E) **Ground-Mounted Antenna equipment.** On collector roads, neighborhood routes and local roads, the City prefers ground-mounted antenna equipment to be concealed as follows: (i) within a landscaped parkway, median or similar location, behind or among new/existing landscape features and painted or wrapped in flat natural colors to blend with the landscape features; and (ii) if landscaping concealment is not technically feasible, disguised as other street furniture adjacent to the support structure, such as, for example, mailboxes, benches, trash cans and information kiosks. On arterial roads outside underground districts, proposed ground-mounted antenna equipment should be completely shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted antenna equipment cabinets. To promote and protect public health and safety and prevent potential hazards hidden behind large equipment cabinets, no individual ground-mounted antenna equipment cabinet may exceed 4.5 feet in height or 2.5 feet in width. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square inches to prevent litter or other objects left on such surfaces.
- (F) **Antenna equipment Volume.** All antenna equipment associated with a small wireless facility installed above ground level or mounted to a pole shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) 17 cubic feet in volume if installed in a non-



residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna equipment. The volume calculation shall not include any equipment or other improvements placed underground.

(4) Small Cell Facility Pole Types

(A) Pole installations are based on the following pole types, preferences ordered from most preferred to least preferred:

(B) **Streetlights.** Installation of a small wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and antenna equipment. The design shall include the following:

1. The maximum diameter of the pole to support the light fixture and small cell facility shall be 16-inches.
2. Maximum height of the SWF shall not exceed six feet above the existing pole not to exceed meet the maximum height of 40 feet.
3. Antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole, placed internal to the pole or recessed into the pole.
4. Unless internal to the pole the antenna or antennal enclosure and associated fixture shall be colored to match or be compatible with the pole.
5. Streetlights within line of-sight of other streetlights must be a common configuration/design and similar material or as approved by the Director.
6. Include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. If the luminaire is significantly relocated, a lighting plan shall be provided showing City standards are met.
7. The pole is to be designed to break away in the event of a collision. If determined by the City Engineer the street classification and the location of the pole within the ROW are such that the breakaway design is not warranted, the request is exempt from this standard.

(C) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing/replacement wood utility pole must meet the following requirements:

1. Antennas shall be placed above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by substantial evidence in the written record.
2. All cables, wires and other connectors must be concealed within a sleeve covering the side-arm mount or extension arm or conduit to

match the existing pole color.

- 3- Pole may be replaced with a taller pole provided the replacement pole does not exceed 40 feet or 10 percent taller than the existing pole whichever is greater. Exceptions to this height restriction require documentation from the pole owner showing the additional height is required for safety regulations and/or practices. . .

(D) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and antenna equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity or the addition of a new streetlight is determined by the City as not a feasible location, the applicant may install a metal or composite pole capable of concealing all the antenna equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twenty-four (24) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome, or internal to the pole.

1. Maximum pole diameter: 24-inches
2. Height compatible to streetlights or other utility poles in close proximity not to exceed 40 feet.
3. New pole (wireless facility only) the location shall be a minimum of 500 feet from an existing pole (including streetlights and utility poles).
4. Poles within line of-sight of other streetlights or utility poles must be a common configuration/ design and similar material or as approved by the City Engineer with the following preference: 1) Streetlight 2) Utility poles.

(5) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the owner's express written consent.

(6) **Obstructions; Public Safety.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape.

- (7) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other antenna equipment shall be routed and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduits mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (8) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (9) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter, or another type of meter acceptable to the City. The approval authority shall not approve a separate ground-mounted electric meter pedestal.
- (10) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.
- (11) **Existing Conduit or Circuits.** Access to any conduit or circuits owned by the City is prohibited to protect the City's infrastructure, prevent interference with the City's municipal functions and protect public health and safety.

(c) **Small Wireless Facilities On Private Property.**

- (1) For SWF installed on streetlights, utility poles, parking lot lights, or single use poles, the standards in Section 2.7.b applies.
- (2) For SWF installation on all other structures, including but not limited to buildings and water towers the following standards apply:
 - (A) **Overall Height.** Small wireless facilities on private property shall be the minimum height needed to achieve the network objective may not exceed the applicable height limit for structures in the applicable zoning district or overlay zone.

- (B) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
- (C) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use.
- (D) **Towers, Poles and Other Freestanding Small Wireless Facilities.** All new towers, poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome or placed internal to the new tower, pole, or freestanding structure. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed forty (40) feet. The pole diameter shall not exceed twenty four (24) inches.
- (E) **Building-Mounted Small Wireless Facilities.**
- i. **Preferred Concealment Techniques.** All applicants must propose new non-tower small wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with substantial evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
 - ii. **Facade-Mounted Equipment.** When small wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve facade-mounted equipment in accordance with this Section 2.7(c)(6)(B). All facade-mounted equipment must be concealed behind screen walls and mounted flush to the facade. The approval authority may not approve

“pop-out” screen boxes. Except in industrial zones, the approval authority may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the facade.

- (F) **Lighting.** Antennas and antenna equipment shall not be illuminated except as required by municipal, federal or state authority, provided this shall not preclude deployment on new or replacement streetlights or parking lot lights.
- (c) **Strand Mounted Equipment:** Strand mounted small wireless facilities are permitted subject to the following criteria:
- (A) Each strand mounted antenna shall not exceed 3 cubic feet in volume.
 - (B) Only 2 strand mounted antennas are permitted between any two existing poles.
 - (C) Strand mounted devices shall be placed as close as possible to the nearest pole and in no event more than five feet from the pole unless a greater distance is required by the pole owner.
 - (D) No strand mounted device will be located in or above the portion of the roadway open to vehicular traffic.
 - (E) Strand mounted devices must be installed with the minimum excess exterior cabling or wires (other than original stand) to meet the technological needs of the facility.
- (d) **Pre-Approved Designs.**
- (1) **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City Council authorizes the approval authority to designate one or more pre-approved designs for small wireless facilities and other infrastructure deployments. This subsection (d) sets out the process to establish or repeal a pre-approved design and the expedited review procedures and findings applicable to these applications.
 - (2) **Adoption.** The approval authority may, in the approval authority’s discretion, establish a pre-approved design when the approval authority finds that a proposed pre-approved design exceeds the design standards in this Policy. The approval authority shall post a public notice posted at City Hall, with the City Clerk and in a newspaper of general circulation within the City. The notice must generally describe the pre-approved design, include a photograph or photo simulation, specify whether the pre-approved design would be limited or restricted in any districts and contain a reference to the appeal procedure. The pre-approved design shall become effective 15 days from the notice

required in this subsection. A decision by the approval authority not to adopt a proposed pre-approved design or the approval authority's failure to act on a request for a proposed pre-approved design is not appealable.

- (3) **Repeal.** The approval authority may repeal any pre-approved design by written notice posted at City Hall. The repeal shall be immediately effective. The approval authority's repeal, refusal to repeal or failure to act on a request to repeal a pre-approved design is not appealable.
- (4) **Modified Review Process.** In nonresidential districts, applications for a pre-approved design shall not be subject to the notice requirements in section 2.4(a) or any potential appeals under section 2.4(f). In residential districts, applications for a pre-approved design shall remain subject to the notice requirements in section 2.4(a) and any potential appeals under section 2.4(f).
- (5) **Modified Findings.** When an applicant submits a complete application for a pre-approved design, the approval authority shall presume that the findings for approval in sections 2.4(c)(1), (c)(3) and (c)(5) are satisfied and shall evaluate the application for compliance with the findings for approval in sections 2.4(c)(2), (c)(4), (c)(6) and (c)(7).
- (6) **Nondiscrimination.** Any applicant may propose to use any pre-approved design whether the applicant initially requested that the approval authority adopt such pre-approved design or not. The approval authority's decision to adopt a pre-approved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the pre-approved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the pre-approved design with like materials, finishes and overall quality shall be acceptable as a pre-approved design.

SECTION 3 ADJUSTMENT TO STANDARDS

- (a) **Preface.** The provisions in this Section 3 establish a procedure by which the City may grant an adjustment to the standards in this Policy but only to the extent necessary to avoid conflict with applicable federal or state law. When the applicant requests an adjustment, the approval authority shall consider the findings in Section 3.b in addition to the findings required under Section 2.4.c. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance.
- (b) **Required Findings.** The approval authority shall not grant any limited exception pursuant to this Section 3 unless the approval authority finds all the following:
 - (1) the applicant has provided the approval authority with a reasonable and clearly defined technical service objective to be achieved by the proposed small wireless facility;

- (2) the applicant has provided the approval authority with a detailed written statement that explains why: (A) a denial based on the application's noncompliance with a specific provision or requirement would violate federal law, state law or both; or (B) a provision in this Policy, as applied to the applicant, would violate any rights or privileges conferred on the applicant by federal or state law;
 - (3) the applicant has provided the approval authority with a written statement that contains a detailed and fact-specific explanation as to why the proposed small wireless facility cannot be deployed in compliance with the applicable provisions in this Policy;
 - (4) the applicant has provided the approval authority with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the City, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed small wireless facility;
 - (5) the applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant's reasonable and clearly defined technical service objective to be achieved by the proposed small wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive facilities dispersed throughout the intended service area;
 - (6) the exception requested by the applicant does not compromise or excuse compliance any fire safety or other public safety standard; and
 - (7) the exception is narrowly tailored such that any deviation from this Policy is only to extent necessary for compliance with federal or state law.
- (c) **Evidentiary Standard.** The applicant shall have the burden to prove to the approval authority that an exception should be granted pursuant to this Section 3. The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.
- (d) **Expert Review.** Independent expert and/or consultant review will generally be appropriate when considering an exception request.
- (e) **Legal Review.** Any exception request shall require the consultation of the City Attorney as to the validity and legal justification for the exception.