

## ARLINGTON SELECT BOARD



### SMALL CELL WIRELESS FACILITIES POLICY

#### I. Statement of Purpose & Authority:

##### *A. Purpose*

The purpose of this policy is to establish a process and application criteria for permitting the placement of so-called “small cell wireless facilities” within public way and/or on Town Property. The goal of this policy and the application process shall be to ensure the safety, non-interference, and visual quality of the public right of way and the Town generally, while also providing the benefits of improved cell service consistent with this Board’s grant of location practices.

##### *B. Authority*

The Select Board holds a wide range of authorities and responsibilities relative to public ways, traffic rules, parking, permits, licenses, approvals, and enforcement of regulations on the use and maintenance of public ways under both the General Laws and Title III of the Town By-Laws (Public & Private Ways). These duties and responsibilities include, but are not limited to offering grants of location for utilities on and around the public way and pole attachment agreements for town-owned poles. The Select Board is also the general authority for similarly-scoped access rights to most Town properties.

#### II. Definitions:

- A. “*Antenna*” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- B. “*Applicable Codes*” means the building, fire, electrical, plumbing, and mechanical codes adopted by the Commonwealth of Massachusetts and applicable within the Town of Arlington.
- C. “*Application*” means a request for a permit to collocate small wireless facilities in the ROW.

- D. *“Board Designated Agent”* means the Town employee or official authorized by the Select Board to review applications prior to public hearing and/or establish Design Rules and Regulations.
- E. *“Town pole”* means a pole owned, managed or operated by or on behalf of the Town.
- F. *“Collocate”* means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a pole or wireless support structure. “Collocation” has a corresponding meaning.
- G. *“Communications service provider”* means a cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a Wireless Provider.
- H. *“Design Rules and Regulations”* means additional reasonable, non-discriminatory aesthetic standards for SWFs set by the Board Designated Agent or other appropriate Town authority, provided that such standards shall be published with sufficient notice to applicants.
- I. *“Double poles”* means any set of presently co-located utility poles erected directly alongside one another and typically connected to one another for any purpose including, but not limited to, replacing an aging pole, shoring up a damaged pole, or adding more equipment than can be borne by a single pole.
- J. *“Micro Wireless Facility”* means a wireless facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.
- K. *“Person”* means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the Town.
- L. *“Pole”* means a pole or similar structure that is or may be used in whole or in part for communications, electric transmission or distribution, lighting, signage, or a similar function. Such term includes Town poles but does not include wireless support structures.
- M. *“Public Shade Tree”* means trees as defined by M.G.L. c. 87 sec. 1.

- N. *“Rights-of-Way”* or *“ROW”* means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the Town.
- O. *“Small wireless facility”* or *“SWF”* means a wireless facility that meets both of the following qualifications: (i) each antenna could fit within an enclosure of no more than three cubic feet in volume; and (ii) all other wireless equipment associated with the wireless facility, whether ground- or pole-mounted, is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, vertical cable runs for the connection of power and other services.
- P. *“Wireless facility”* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies and rectifiers, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- Q. *“Wireless provider”* means a person who provides wireless services or builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures.
- R. *“Wireless services”* means any services, whether at a fixed location or mobile, provided to the public using wireless facilities.
- S. *“Wireless support structure”* means a freestanding structure, such as a monopole; a tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term does not include a pole.

III. Permit Requirements & Prohibitions:

*A. Applicability.*

1. No person shall collocate a small wireless facility in the ROW without first obtaining a permit for it, except as otherwise provided in this policy.
2. An permit shall not be required for: (i) routine maintenance of an existing small wireless facility; (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height; or (iii) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing poles, in compliance with applicable codes.

*B. SWF Requirements*

SWFs in the ROW shall comply with the following requirements:

1. The SWF will not interfere with the safety and convenience of ordinary travel over the ROW or access as required by the Americans with Disabilities Act (“ADA”) before or after installation of SWFs or other related equipment;
2. The SWF may not extend more than ten feet above the pole supporting them, or 60 feet total in height above the ground, whichever is lower in height;
3. The appearance of the SWF shall be similar to (a) the existing equipment on the pole or on other nearby poles (b) the color of the pole, or (c) another color reasonably requested by the Board Designated Agent;
4. The dimensions of the Antenna shall not exceed sixteen (16) inches in diameter or forty (40) inches in height;
5. No part of the SWF shall extend further than four (4) feet from the pole if installed twenty (20) feet or higher above the ground or further than two (2) feet if installed below 20 feet above the ground;
6. No part of the SWF shall extend below eight (8) feet above ground level;
7. The subject SWF shall not be installed within 180 feet of another pole-mounted SWF;
8. No SWF shall be installed on double poles;
9. No SWF shall be installed on poles with existing SWF or other substantial wireless equipment already in place, except that existing equipment may be replaced with or without permit in a manner consistent with this policy;

10. No SWF shall interfere with the health of public shade trees;
11. No SWF shall interfere with the health of public shade trees;
12. No SWF shall be placed upon poles which cannot safely structurally support additional equipment ;and
13. Any additional non-discriminatory aesthetic requirements set forth in Design Rules and Regulations approved by the Board Designated Agent if sufficient noticed for applicants.

*C. Waiver of Requirements*

The Board Designated Agent may waive one or more of the requirements in this section upon good cause shown. Such waivers shall be granted in a nondiscriminatory manner.

*D. Installation & Access*

All SWFs shall be installed in accordance with the applicable codes in force at the time of installation.

*E. Access*

Wireless providers and their employees, agents, and contractors shall have the right of access to permitted poles, wireless support structures and small wireless facilities in the ROW in accordance with the reasonable and nondiscriminatory policies of the Town applicable to all utilities with facilities in the ROW or doing work in the ROW.

*F. Repairs.*

A wireless provider shall repair, at its sole cost and expense, any damage to Town streets, sidewalks, curbs, gutters, trees, parkways, Town poles or other property, utility lines and systems, or sewer or water systems or lines resulting from the collocation of a small wireless facility in the ROW or the installation of a pole in the ROW. The wireless provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the damage.

IV. Application:

*A. Manner of Application*

A wireless provider seeking such a permit, or its duly authorized representative, shall apply to the Office of the Select Board on a form, paper or electronic, provided by the Town.

*B. Application Contents*

The application shall contain at a minimum the following:

1. The wireless provider's name, address, telephone number, and e-mail address;
2. The name, address, telephone number, and e-mail address of the wireless provider's representative, if different than the wireless provider;
3. A general description of the proposed work and an engineering diagram showing the small wireless facility as mounted on the pole or structure, with dimensions specifically including the elevation of the proposed equipment;
4. A site plan signed by a professional engineer, with sufficient detail to identify the location of the site and show the proposed location of the facilities the applicant seeks to install in the ROW, including any manholes or poles and the size, type, and depth of any conduit or enclosure;
5. The pole number if applicable;
6. The expected useful life of the equipment;
7. A radio frequency affidavit, signed by a professional radio frequency engineer, which includes a brief statement of how the proposed SWF addresses a significant gap in coverage, or capacity, or both and why the proposed pole is the most feasible location for a SWF;
8. A radio frequency emissions report demonstrating that the proposed SWF complies with the maximum permissible exposures adopted by the Federal Communications Commission, unless such a report has been previously filed with the Town for substantially similar SWF installations and related equipment;
9. Certification by the applicant that a direct abutters have received notice of the application via certified mail, and further, that a public notice of the petition has been advertised at the applicant's expense.

10. Where applicable, the written consent of the pole or facility owner subject to SWF installation;
11. Proof of liability insurance for installation of SWFs; and/or
12. Insurance certificates for any SWF or related equipment located on Town Poles.

*C. Application Fee*

An application fee of \$\_\_\_\_\_ (up to \$500) per application payable to the Town of Arlington. The \$\_\_\_\_\_ (up to \$500) fee shall cover up to five (5) locations, which each addition location per application subject to a \$100 per location fee.

V. Applications with New Poles:

A request by a wireless provider for a grant of location to install a new pole in the right-of-way in order to support small wireless facilities shall be processed and determined in a nondiscriminatory manner pursuant to the provisions of Town's grant of location regulations; provided, however, that such a request is deemed approved and the grant of location is deemed issued if the Town fails to approve or deny the request within ninety (90) days of its receipt.

VI. Attachment to Town Poles in the ROW:

*A. Additional Town Pole Application Requirements*

1. Attachments to Town Poles shall only be permitted where the wireless provider applicant has executed a license agreement with the Town.
2. Applications to collocate small wireless facilities on Town poles shall be processed with the additional regulations set forth in this section, but otherwise in the same manner as all other SWFs under this policy.

*B. Non-Exclusivity*

The Town will not enter into exclusive arrangements with any person for the right to collocate on Town poles.

*C. Rates for Town Poles*

The rate for collocation of small wireless facilities on a Town pole shall be \$ (up to \$270) per Town pole per year.

*D. Make-Ready Work:*

1. Within 60 days after receipt of a complete application to collocate small wireless facilities on a Town pole, the Town shall provide a good faith description of any make-ready work necessary to enable the Town pole to support the requested collocation, including pole replacement if necessary. The Town will require make-ready work only as necessary to meet applicable codes or industry standards and will not require additional permitting to perform such work.
2. If the Town determines to perform make-ready work itself or through a third-party agent, it shall provide a good faith estimate for such work to the wireless provider within 60 days after receipt of a complete application.

Fees for make-ready work shall be commercially reasonable and shall not exceed the lesser of: (a) the Town's actual costs; or (b) the amount the Town charges to other communications service providers for similar work. The Town shall exclude from such fees costs related to pre-existing or prior damage or noncompliance or any consultant's fees or expenses.

*E. Liability*

The wireless provider assumes all risk of liability for damages that may occur to persons or property on account of the collocation by it or its agent of a small wireless facility on a Town pole in the ROW.

*F. Insurance*

A wireless provider that has been granted a permit to place a small wireless facility on a Town pole in the ROW shall maintain in effect, during the time that its small wireless facility is located in the ROW, commercial general liability insurance and commercial automobile liability insurance covering the Town against claims, injury or damage to persons or property caused by the proposed work, in amounts of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and \$2,000,000 for each personal injury liability. On request of the Town, such wireless provider shall provide certificates of insurance or other evidence of the above coverage. Such a provider may self-insure any required coverage as long as it or its parent maintains a net worth of at least \$200 million.



VII. Review of Small Wireless Facility Applications:

A. *Board Designated Agent Review*

1. The application shall be date-stamped upon receipt by the Select Board Office. Within ten (10) days of receiving an application, the Board Designated Agent will determine and notify the applicant by email whether the application is complete. If an application is incomplete, the Board Designated Agent will specifically identify the missing information. The processing deadline in this section shall be tolled from the date of the email notice of incompleteness to the date the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the Board Designated Agent.
2. The Board Designated Agent will approve an application unless the proposed collocation fails to comply with applicable codes or the requirements of Section III.B of this Chapter. The Board Designated Agent will issue a permit immediately upon approval of an application.
3. All applications shall be processed on a nondiscriminatory basis. An application is deemed approved and the permit is deemed issued if the Board Designated Agent fails to approve or deny the application within 60 days of receipt of the application consistent with Federal Communications Commission rules.
4. The Board Designated Agent shall document the basis for a denial, including the specific code provisions or requirements of Section III.B on which the denial is based, and send the documentation to the applicant on or before the day the Board Designated Agent denies the application. The applicant may cure the deficiencies identified by the Board Designated Agent and resubmit the application within 60 days of the denial without paying an additional application fee. The Board Designated Agent shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial.

B. *Appeal*

Within 30 days of any denial by the Board Designated Agent of an initial application or a resubmitted application, the applicant may appeal to the Select Board, which will make a decision within 30 days of the appeal. The Board shall base its decision exclusively on whether the Board Designated Agent's determination that the

proposed collocation fails to comply with the specific applicable code provisions or requirements of Section 5 cited in the denial is correct as a matter of law.

An applicant may in its discretion file a consolidated application to collocate small wireless facilities at multiple locations. The denial of one or more facilities in a consolidated application shall not delay processing of any other facilities in the same application, and the Town will issue a single permit for all approved locations. If any facility in a consolidated application is denied, each such facility may be the subject of a resubmitted application as provided in paragraph 4(A)(4) or an appeal as provided in paragraph 4(A)(5).

*C. Permit Duration.*

A permit issued under this Chapter shall be of unlimited duration; provided, however, that such permit shall expire if construction of the proposed facility is not commenced within twelve (12) months of the permit issuance date or is commenced and then suspended for more than six (6) months unless the delay is caused by the lack of commercial power or communications facilities at the site, in which case these periods are automatically extended until six months after such facilities become available at the site. The Board Designated Agent and the applicant may also agree to extend the period within which construction must commence or may be suspended.

**VIII. Abandonment and Removal of SWFs:**

*A. Removal.*

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

*B. Abandonment.*

The Town may require a wireless provider to remove a small wireless facility permitted hereunder within 180 days after the date that the facility ceases to be used unless the wireless provider gives the Town reasonable evidence that it is diligently working to place the facility or pole back in service. Should the wireless provider fail to timely remove the small wireless facility or pole, the Town may remove such facility and recover the actual, reasonable cost of such removal from the wireless provider.

IX. Indemnification:

As a condition of its permit, a wireless provider granted a permit under this Policy shall defend, indemnify, and hold harmless the Town, its Select Board, other boards, commissions, officials, officers, agents, contractors, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including court costs and reasonable attorney's fees resulting from the negligence of the wireless provider, its officers, agents, or employees in connection with the permitted work. This indemnity provision shall apply regardless of the merit or outcome of such claim or suit.

X. Severability

If any provision or section of this Policy, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Policy or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and be enforced to the fullest extent permitted by law.