



Subject: Ordinance 2820, A Special Ordinance of the City of Lake Oswego Adopting Regulations for Wireless Facilities in the Public Right of Way.	
Meeting Date: June 18, 2019	Staff Member: Madison Thesing, Management Analyst Rachel Sykes, Assistant Public Works Director Department: Public Works
Action Required <input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	Advisory Board/Commission Recommendation <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:
Staff Recommendation: Enact Ordinance 2820, a special ordinance adopting regulations for wireless facilities in the public right of way.	
Recommended Language for Motion: Move to enact Ordinance 2820.	
Project / Issue Relates To: <input type="checkbox"/> Council Goals/Priorities <input type="checkbox"/> Adopted Master Plan(s) <input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL

Proposed adoption of Ordinance 2820 to formalize the design and placement standards of wireless facilities in the public right of way.

BACKGROUND

Small Cell

Traditionally, wireless providers have relied on large cell phone towers to maximize cell coverage. However, as data usage has increased, carriers are needing additional small cell wireless infrastructure to supplement service. Small cell infrastructure allows for an increase in

coverage and data bandwidth. Small wireless facilities have a range that varies from a few hundred feet to upwards of 1,000 feet, depending on terrain, vegetation, and the radio frequencies used. Small wireless facilities can include 4G and 5G antennas and equipment. The equipment required includes radios, antennas, power, fiber, and cooling fans. This technology is rapidly changing and will continue to for future iterations.

FCC Ruling

On September 27, 2018, the Federal Communications Commission (FCC) released a Declaratory Ruling and Third Report and Order (FCC 18-133) that significantly limits local authority over small wireless infrastructure deployment and fees for use of the right of way. The FCC Order took effect January 14, 2019. Under the FCC Order, there are prescribed definitions of small wireless facilities and defined criteria for aesthetic or design standards. The FCC Order also specifies that such facilities may not result in human exposure to radiofrequency (RF) radiation in excess of applicable standards in the FCC's rules. It should be noted that federal law preempts local regulation of RF emissions. The City retains discretion on aesthetics and placement prioritization.

Previous Council Direction

On [November 20, 2018](#) during a Council Study Session, staff presented an introduction to small cell wireless infrastructure and the FCC Order. Council directed staff to move forward on the creation of wireless facilities placement and design standards.

On [January 2nd](#), staff presented an update on the FCC Order and local government's denied request for a stay of the small cell order. During that business meeting, Council adopted Resolution 19-03, which established right of way usage fees and small cell permit fees. Additionally, staff presented an initial version of the placement and design standards, which was adopted by the City Engineer in order to comply with the FCC Order timelines. Council directed staff to return to Council with finalized wireless facilities placement and design standards for formal adoption.

DISCUSSION

Policy Goals

Through feedback from Council, City staff, and stakeholder outreach, staff identified four main goals for the wireless facilities in the public right of way policy:

- Aesthetically conscious
- Adaptive and responsive to future technology changes
- Protect valuable right of way space and use space efficiently
- Support technology advancement for 5G and beyond

The intent of the policy would be to create a mutually beneficial solution for the placement of technological infrastructure that supports personal use, economic development, and City

applications, such as smart city infrastructure. With this framework in mind, the policy was shaped to support the goals and intention.

Policy Formulation

Over the last six months, staff has been participating in regional coordination forums and conducting stakeholder outreach to help inform our policy. Below is an outline of the activities:

- League of Oregon Cities' Committees – The League convened cities from around the state with representatives from Verizon, AT&T, and T-Mobile. The formed committees developed model code, design standards, and public education relating to small wireless facilities. City staff participated in the committees and incorporate the learnings into our own design standards.
- Regional Coordination Meetings – The City of Beaverton organized a Washington County Small Cell Wireless Technical Advisory Committee. The committee was strictly city, county, and utility staff to coordinate regional efforts and general information sharing.
- Industry Day – Public Works hosted an industry day with wireless carriers and providers. The event consisted of a presentation, policy review, and individual meetings with providers. Along with Public Works, staff from City Attorney's Office, Engineering, and IT were present.
- Pole Forum – The City of Wilsonville hosted a Small Cell Wireless Pole Manufacturers Forum for the region. Four pole manufacturers presented about their products and pole designs. City staff has been in communication with two of the presenters.

In addition to our regional focus, staff has been working closely with our hired consulting law firm, Telecom Law Firm, to assist with developing the policy. Telecom Law Firm has provided expertise and legal council on the topic, as well as updates from pending federal litigations and policy examples from around the nation.

Wireless Facilities in the Public Rights of Way Policy

The policy is divided into three sections: General Provisions, Section 6409 Eligible Facilities, and Small Wireless Facilities. General Provisions are standards that all wireless facilities in the right of way must adhere to. These provisions are modeled after the newly adopted Right of Way Ordinance (Chapter 51 in the Code). Section 6409 refers to Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012. Facilities that are eligible for 6409 approval are defined by the FCC and are currently reviewed by the Planning Department. By incorporating 6409 standards into the policy, all wireless facilities standards are centralized into one policy. Lastly, the Small Wireless Facilities section is in response to the FCC Order and codifies the goals of the City.

Key points in the Small Wireless Facilities section include:

- Required permit and supporting materials, which include construction drawings, photo simulations, project justification, RF compliance report, and acoustic analysis
- Permit term length, which will be effective for five years with the option to renew
- Location preferences and prohibited locations
- Pole preferences and prohibited support structures
- Antenna concealment, individual antenna volume and cumulative volume allowed
- Standards for placing on utility poles, streetlight poles, and small cell purpose built poles
- Noise standards for residential and non-residential areas

The policy is responsive to the needs of today and the existing technologies, but allows for flexibility and adaptability as technology changes. Staff recommends this policy to be reevaluated after a year of implementation to ensure the goals of the City are being met.

FISCAL IMPACT

Costs for compliance with FCC ruling consisted of staff time and consultant fees.

RECOMMENDATION

Adopt Ordinance 2820 to formalize the design and placement standards of wireless facilities in the public right of way.

Direct staff to revisit the Ordinance 2820 after one year of implementation to ensure the goals and intent of the policy are being upheld.

Direct staff to continue work to address wireless placement on private property.

ATTACHMENT

1. Ordinance 2820

ORDINANCE 2820

A SPECIAL ORDINANCE OF THE CITY OF LAKE OSWEGO ADOPTING REGULATIONS FOR WIRELESS FACILITIES IN THE PUBLIC RIGHT OF WAY.

WHEREAS, the City of Lake Oswego desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety, and welfare; and

WHEREAS, the City recognizes that wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the wireless industry needs wireless facilities deployed in the public rights-of-way; and

WHEREAS, the City desires to adopt right-of-way regulations for wireless facilities consistent with local, state and federal laws, standards and requirements;

NOW, THEREFORE,

THE CITY OF LAKE OSWEGO ORDAINS AS FOLLOWS:

Section 1. The policy attached as Attachment 1 to this ordinance, titled “Wireless Facilities in the Public Rights-of-Way,” is hereby adopted as regulations establishing standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal in the public rights-of-way within the City’s territorial boundaries.

Section 2. **Effective Date.** As provided in Section 35.C. of the Lake Oswego Charter, this ordinance shall take effect on the 30th day following enactment.

Enacted at the regular meeting of the City Council of the City of Lake Oswego on the 18th day of June, 2019.

AYES:

NOES:

EXCUSED:

ABSTAIN:

Kent Studebaker, Mayor

ATTEST:

Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:

David D. Powell, City Attorney

CITY OF LAKE OSWEGO	
CITY POLICY	Adopted by City Engineer: January 11, 2019 Revised & Adopted by City Council: June 2019
GENERAL SUBJECT: WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY	

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

1. In alignment with federal law, Federal Communications Commission regulations and Oregon state law, the City of Lake Oswego intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the public rights-of-way within the City's territorial boundaries. 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.
2. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interest is maintained on a case-by-case basis; (2) protecting the City's visual character from potential adverse impacts or visual blight created or exacerbated by wireless communications infrastructure; (3) protecting and preserving the City's environmental resources; and (4) promoting access to high-quality, advanced wireless services for the City's residents, businesses, and visitors.
3. 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 interstate or intrastate 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 unfair, unreasonable, discriminatory or anticompetitive fees that exceed the reasonable 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

City means the City official responsible for reviewing applications for permits or approvals under this Policy and vested with the authority.

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) antennas mounted within a radome; (2) equipment cabinets in the public rights-of-way painted or wrapped to match the background; undergrounded placement of equipment in vault, (3) radio equipment shrouds mounted to the side of a streetlight or utility pole; and (4) Stealth Poles.

FCC means the Federal Communications Commission or its duly appointed successor agency.

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 from time to time.

Personal wireless services means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

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, which defines the term as facilities that provide personal wireless services.

RF means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

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.

Stealth Pole means utility poles or streetlight poles designed to accommodate and entirely or nearly entirely conceal the incorporated personal wireless service facilities, as determined through the City's preapproved design process set forth in Section 3.9.

SECTION 1.3. WIRELESS FACILITIES IN THE PUBLIC RIGHTS OF WAY GENERALLY

Only those wireless facilities that are equal to or less than the size of small wireless facilities allowed under Section 3 of this policy shall be allowed within the public rights-of-way. All wireless facilities in the public rights-of-way shall comply with the location requirements and design standards of Section 3 of this policy. Nothing in this Section 1.3 shall be construed to limit or prevent the applicability of Section 6409 to an eligible facilities request that does not cause a substantial change.

SECTION 1.4. STANDARD CONDITIONS OF APPROVAL FOR WIRELESS FACILITIES

In addition to all other conditions adopted by the City, all wireless facilities issued under this Policy, whether approved by the City or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section 1.4. The City shall have discretion to modify

or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Policy. To the extent required by applicable FCC regulations, the City 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.

1. **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a wireless facility approved or deemed-approved, the permittee shall provide the City with documentation reasonably acceptable to the City that the 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.** Approval will automatically expire six (6) months from the approval date (the “build-out period”) unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the facility or its use. The build-out period may be extended for an additional six (6) months by the City for a good cause. If this build-out period expires, including any extension, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same, or substantially similar project.
3. **Site Maintenance.** The permittee shall install and maintain all wireless facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The permittee shall, at its own expense, repair and maintain wireless facilities from time to time as may be necessary to accomplish this purpose. If, after written notice from the City of the need for repair or maintenance, the permittee fails to repair and maintain wireless facilities as requested by the City and by the date established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the permittee's sole expense. Upon receipt of a detailed invoice from the City, the permittee shall reimburse the City for the costs the City incurred within 30 days.
4. **Compliance with Laws.**
 - a. 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 wireless facility or any use or activities in connection with the use authorized in the wireless facility 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 Lake Oswego 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 Lake Oswego Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.

- b. In addition to any other remedy provided under this provision, a violation of this provision is a civil violation and shall be enforced under the provisions of Article 34.04 of the Lake Oswego Municipal Code. Each day that the violation exists or continues shall constitute a separate violation. Each civil violation shall be punishable by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).
 - c. Before issuing the first citation for a violation, the City shall mail written notice of the violation to the utility operator providing a reasonable time (no less than 20 and no more than 40 days from the date of the notice) for the utility operator to remedy the violation to the City's satisfaction. The notice shall be mailed to the utility operator's address as listed in the operator's registration as mandated by the Lake Oswego Municipal Code. If the utility operator has no current registration, no notice shall be required.
 - d. The rights, remedies and penalties provided under this provision are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law, including without limitation any judicial or other remedy at law or in equity for enforcement of this provision.
5. **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. 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 Lake Oswego Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The City may issue a stop work order for any activities that violates this condition in whole or in part. As used in this condition, "adverse impacts" include, but are not limited to, trespassing on adjacent properties during construction, maintenance or

removal, excessive noise or light emission by the wireless facility, construction equipment and/or other inventory and supplies left overnight in the vicinity of the wireless facility.

6. **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City retains the right and privilege to repair, disable, or remove the facilities or equipment located within the rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.
7. **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for organization responsible for the wireless facility, which includes without limitation such primary contact person's full name, title, direct telephone number, organization main telephone number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information.
8. **Indemnification.** The permittee and, if applicable, the support structure owner upon which the small wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the wireless facility permit, and (2) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with the wireless facility permit or the wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the support structure owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the support structure owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve the

wireless facility permit, and that such indemnification obligations will survive the expiration, revocation or other termination of the wireless facility permit.

9. **Permit Revocation.** Any permit granted under this Policy may be revoked in accordance with the provisions and procedures in this condition. The Director may initiate revocation proceedings when the Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Director may conduct a public hearing to revoke any permit granted under this Policy, the Director must issue a written notice to the permittee that specifies (i) the facility; (ii) the violation(s) to be corrected; (iii) the timeframe in which the permittee must correct such violation(s); and (iv) that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s). A permit granted under this Policy may be revoked only by the City Council after a duly noticed public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

10. **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 wireless facility permit application, wireless facility permit, the approved plans and photo simulations incorporated into the approval, all conditions associated with the approval, any ministerial permits or approvals issued in connection with the approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the wireless facility 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.

11. **Abandoned Wireless Facilities.** The wireless facility authorized under the wireless facility permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 30 days after a wireless facility is abandoned or deemed abandoned, the permittee and/or support structure owner shall completely remove the 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 Lake Oswego Municipal Code. In the event that neither the permittee nor the support structure owner complies with the removal and restoration obligations under this condition within said 30-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 support structure owner shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
12. **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 abide by all tree removal and protection standards of the City.
13. **Future Undergrounding Programs.** If other public 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 wireless facility is located, the permittee must underground its equipment except the antennas, any electric meter and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. 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. If the City requires undergrounding utilities in a specific area at a later time after equipment has been deployed, the permittee must follow new set standards and must underground its equipment except the antennas, any electric meter, and any other equipment that must be placed above ground to function, or permittee may be required to replace the existing pole with a City approved Stealth Pole. 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.
14. **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (1) change any street grade, width or location; (2) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (3) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work").

15. **City's Management of the Right-of-Way.** The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small wireless facility permit. If the City determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the City's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the City determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs.

SECTION 2. ELIGIBLE FACILITIES REQUESTS AS DEFINED BY SECTION 6409 WITHIN THE PUBLIC RIGHTS-OF-WAY

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

1. **Applicability.** Notwithstanding any provision in this Policy to the contrary, all requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station located within the public rights-of-way and submitted pursuant to Section 6409 will be reviewed and approved or denied without prejudice in accordance with the standards and procedures in this Section 2.
2. **Section 6409 Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station located within the public rights-of-way and submitted with a written request for approval under Section 6409 shall require an approval in such form determined by the City consistent with all valid and enforceable terms and conditions of the underlying permit or other prior regulatory authorization for the tower or base station (each amendment a "Section 6409 approval").
3. **Option to Seek a Discretionary Permit.** A discretionary permit under Section 3 is not required for any request that qualifies for approval pursuant to Section 6409. For any application for a Section 6409 approval properly denied, the applicant may submit the same or a substantially similar application for a discretionary permit under Section 3.
4. **Other Permits and Regulatory Approvals.** No collocation or modification approved pursuant to this section may occur unless the applicant also obtains all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any other permits and/or regulatory approvals issued by other departments or divisions within the City. In particular,

compliance with the City's Tree Code, Chapter 55, is required. Furthermore, any Section 6409 approval granted under this section shall remain subject to any and all lawful conditions and/or legal requirements associated with such other permits or regulatory approvals.

SECTION 2.2. SPECIALIZED DEFINITIONS

Base station means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(1), as may be amended or superseded.

Collocation means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(2), as may be amended or superseded.

Eligible facilities request means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(3), as may be amended or superseded.

Eligible support structure means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded.

Existing means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(4), as may be amended or superseded.

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.

Site means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(6), as may be amended or superseded.

Substantial change means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(7), as may be amended or superseded.

Transmission equipment means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

SECTION 2.3. SECTION 6409 APPLICATIONS, SUBMITTALS AND COMPLETENESS REVIEW

1. **Section 6409 Approval Application.** The applicant shall submit a complete, duly executed Section 6409 approval application on the then-current form prepared by the City. The application must include all the information and materials required by the City for the application, which includes, without limitation, the applicable Section 6409 approval application fee established by City Council resolution, construction drawings, site survey, photo simulations, project narrative and justification, RF compliance report,

regulatory authorization, acoustic analysis, and any additional publicly stated requirements set forth by the City.

2. **Requirements for a Duly Filed Application.** Any application for a Section 6409 approval will not be considered duly filed unless submitted in accordance with the requirements in this Section 2.3(2).
 - a. **Application Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the City. Applicants may generally submit one application per appointment. Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The City shall use reasonable efforts to provide the applicant with an appointment within five working days after the City receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
 - b. **Pre-Application Conferences.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-application conference with the City for all collocations or modifications to any concealed or camouflaged wireless tower or base station. This voluntary pre-submittal conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion 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, 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 applications or other materials may be incomplete or unacceptable. Pre-application conferences should follow the prescribed pre-application procedure, timeline, and fees set by the City.
3. **Application Completeness Review.** Within 30 calendar days after the City receives a duly filed Section 6409 application, the City shall review the application for completeness and, if any application does not contain all the materials required in Section 2.3(1) or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.
4. **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 City within 60 calendar days after the City deems the application incomplete in a

written notice to the applicant. As used in this Section 2.3(4), a “substantive response” must include the materials identified as incomplete in the City’s notice.

5. **Additional Requirements and Regulations.** The City may develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the City finds necessary, appropriate or useful for processing any application governed under this Policy. The City Council further authorizes the City to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the City deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, 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

1. **Administrative Review.** The City shall review a complete and duly filed application for a Section 6409 approval and may act on such application without prior notice or a public hearing.
2. **Decision Notices.** Within five calendar days after the City acts on an application for a Section 6409 approval or before the FCC Shot Clock expires (whichever occurs first), the City shall notify the applicant by written notice. If the City denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
3. **Required Findings.** The City may approve or conditionally approve an application for a Section 6409 approval when the City finds that the proposed project:
 - a. involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - b. does not substantially change the physical dimensions of the existing wireless tower or base station in accordance with the following thresholds:
 - i. increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
 - ii. involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
 - iii. involves installation of more than four equipment cabinets, any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or ground cabinets that are more

than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

- iv. entails any excavation or deployment outside the current site;
- v. defeats the concealment elements of the eligible support structure; or
- vi. does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in subsection (i) through (iv).

4. **Criteria for Denial without Prejudice.** Notwithstanding any other provision in this policy, and consistent with all applicable federal laws and regulations, the City may deny without prejudice any application for a Section 6409 approval when the City finds that the proposed project:

- a. does not meet the required findings in Section 2.4(3);
- b. involves the replacement of the entire support structure; or
- c. violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.

5. **Conditional Approvals.** Subject to any applicable limitations in federal or Oregon law, nothing in this Policy is intended to limit the City's authority to conditionally approve an application for a Section 6409 approval to protect and promote the public health and safety.

6. **Appeals.** Any decision by the City shall be final and not subject to any administrative appeals.

SECTION 2.5. SPECIALIZED STANDARD CONDITIONS FOR SECTION 6409 APPROVALS

In addition to the conditions in Section 1.4 of this Policy, all Section 6409 approvals, whether approved by the City or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section 2.5. The City shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Section 2.

1. **Permit Term.** The City's grant or grant by operation of law of this Section 6409 approval constitutes a federally-mandated modification to the underlying permit or other prior

regulatory authorization for the subject tower or base station, and will be regarded as a modification to the underlying approval for the subject tower or base station. The City's grant or grant by operation of law of this Section 6409 approval will not extend the permit term, if any, for any underlying permit or other underlying prior regulatory authorization. Accordingly, the term for this Section 6409 approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station, and any renewals thereof.

2. **City's Standing Reserved.** The City's grant or grant by operation of law of this Section 6409 approval does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409, any FCC rules that interpret Section 6409 or any eligible facilities request.

SECTION 3. SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY

SECTION 3.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

1. Applicability.

- a. **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 or otherwise deploy small wireless facilities located within the public rights-of-way within the City's jurisdictional and territorial boundaries.
 - b. **Other Infrastructure Deployments.** To the extent that other infrastructure deployments, including without limitation any deployments that require approval pursuant to Lake Oswego Municipal Code Chapter 42 or Chapter 51, involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements, the City shall apply the provisions in this Policy unless specifically prohibited by applicable law.
2. **Exemptions.** Notwithstanding anything in this Policy to the contrary, a small wireless facility permit shall not be required for:
 - a. wireless facilities or other infrastructure deployments owned and operated by the City for its use;
 - b. OTARD (Over-the-Air Reception Devices) facilities; or
 - c. requests for approval to collocate, replace, or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 2 of this Policy.

3. Required Permits and Approvals.

- a. **Small Wireless Facility Permit.** A small wireless facility permit, subject to the City's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement support structure located within the public rights-of-way.
- b. **Other Permits and Approvals.** In addition to a small wireless facility permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City departments or divisions. In particular all small wireless facility placements must be in compliance with the City of Lake Oswego Tree Code, Chapter 55. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small wireless facility permit for the proposed facility. Any application submitted without such small wireless facility permit will be denied without prejudice. Furthermore, any permit or approval granted under this Section 3 shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 3.2. SPECIALIZED DEFINITIONS

Accessory equipment means equipment other than antennas used in connection with a small wireless facility or other infrastructure deployment. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

Antenna means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.

Arterial street means a street designed primarily for long-distance travel, high traffic capacity and low accessibility from neighboring streets. The term "arterial street" as used in this Policy includes freeways, major arterials and minor arterials as defined in the City of Lake Oswego Transportation System Plan.

Batched application means more than one application submitted at the same time.

Collector street means a street designed primarily as a connection between local streets and arterials, moderate traffic capacity and high accessibility from local streets. The term "collector street" as used in this Policy includes major collectors and neighborhood collectors as defined in the City of Lake Oswego Transportation System Plan.

Collocation means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.

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 right-of-way in which the pole is located.

Local street means a street designed primarily to provide access to abutting properties from collectors or arterials, with maximum speeds up to 25 miles per hour and low traffic capacity. The term “local street” as used in this Policy includes all local streets as defined in the City of Lake Oswego Transportation System Plan.

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, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.

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.

Support structure or structure means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded.

SECTION 3.3. SMALL WIRELESS FACILITY PERMIT APPLICATION REQUIREMENTS

- 1. Small Wireless Facility Permit Application.** The applicant shall submit a complete, duly executed small cell permit application on the then-current City form. The application must include all the information and materials required by the City for the application, which includes, without limitation, the applicable permit application fee (per site for batched applications), regulatory authorization, and any additional publicly stated requirements set forth by the City.
- 2. Site 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 proposed site 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 agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s form site agreement shall be deemed a basis to deem the application incomplete.
- 3. Additional Requirements.** The City may develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the City finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 3.4. SMALL WIRELESS FACILITY PERMIT APPLICATION SUBMITTAL PROCEDURES

1. **Requirements for a Duly Filed Application.** Any application for a small wireless facility permit will not be considered duly filed unless submitted in accordance with the requirements in this section 3.4(1).
 - a. **Application Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the City. Applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications. Applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. The City shall use reasonable efforts to provide the applicant with an appointment within five working days after the City receives a written request. Any application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed.
 - b. **Pre-Application Conferences.** The City strongly encourages, but does not require, applicants to schedule and attend a pre-application conference with the City for all proposed projects that involve more than five small wireless facilities.

This voluntary pre-application conference does not cause the FCC Shot Clock to begin and is intended to streamline the review process through informal discussion 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, 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 applications or other materials may be incomplete or unacceptable. Pre-application conferences should follow the prescribed pre-application procedure, timeline, and fees set by the City.

- 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 City within 60 calendar days after the City deems the application incomplete in a written notice to the applicant. As used in

this subsection, a “substantive response” must include the materials identified as incomplete in the City’s notice.

2. **Additional Procedures.** The City may to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the City 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 3.5. APPROVALS AND DENIALS; NOTICES

Post-Approval Public Notice. The City shall administratively approve, conditionally approve or deny a complete and duly filed small wireless facility permit application without a public hearing. After any final approval, public notice will be mailed to all properties and record owners of properties within 300 feet from the project site measured laterally in both directions. The City will be responsible for noticing property owners. Costs incurred by the City will be recovered in permit fees.

The notice will contain: (1) a general project description; (2) the applicant’s identification as provided on the application submitted to the City; (3) contact information for the approval authority; and, (4) a statement that the FCC requires the City to act on small wireless facility permit applications in 60 days for attachments to existing structures and 90 days for new structures. All information for noticing must be provided by the permittee.

1. **Required Findings.** The City may approve or conditionally approve a complete and duly filed application for a small wireless facility permit when the City finds:
 - a. The proposed project meets the definition for a “small wireless facility” as defined by the FCC;
 - b. The proposed project would be in the most preferred location within 300 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 300 feet would be technically infeasible;
 - c. The proposed project would not be located on a prohibited support structure identified in Section 3.7;
 - d. The proposed project would be on the most preferred support structure within 300 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 300 feet would be technically infeasible;

- e. The proposed project complies with all applicable location standards in Section 3.7; and
 - f. The proposed project complies with all applicable design standards in Section 3.8;
 - g. 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.
2. **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or Oregon laws, nothing in this Policy is intended to limit the City's ability to conditionally approve or deny without prejudice any small wireless facility permit application as may be necessary or appropriate to ensure compliance with this Policy.
 3. **Decision Notices.** Within five calendar days after the City acts on a small wireless facility permit application or before the FCC Shot Clock expires (whichever occurs first), the City shall notify the applicant by written notice. If the Director denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
 4. **Appeals.** Any decision by the City shall be final and not subject to any administrative appeals.

SECTION 3.6. SPECIALIZED STANDARD CONDITIONS FOR SMALL WIRELESS FACILITIES

In addition to the conditions in Section 1.4 of this Policy, all small wireless facility permits shall be automatically subject to the conditions in this Section 3.6. The City shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to protect public health and safety or allow for the proper operation of the approved facility consistent with the goals of this Section 3. To the extent required by applicable FCC regulations, the City 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.

1. **Permit Term.** A wireless facility permit will automatically expire five (5) years and one day with one (1) renewal option of five (5) years from its issuance. Any other permits or approvals issued in connection with any collocation, modification or other change to wireless facilities, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law. To the extent that the wireless facility permit is issued in connection with any structure owned or controlled by the City and located in the public rights-of-way, the wireless facility

permit shall be coterminous with the cancellation, termination or expiration of the agreement between the applicant and the City for access to the subject City structure.

2. **Permit Renewal.** At least ninety (90), but no more than one hundred eighty (180), days before the expiration of a permit granted under this policy, the permittee may apply for permit renewal. The permittee must demonstrate that the subject wireless facility complies with all the conditions of approval associated with the permit and all applicable provisions in the Lake Oswego Municipal Code and this Policy that exist at the time the decision to renew or not renew the permit is rendered. The City may modify or amend the conditions on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, the wireless facility permit will automatically expire five (5) years and one day from its issuance.
3. **Electric Meter Upgrades.** If the commercial electric utility provider adopts 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.

SECTION 3.7. LOCATION REQUIREMENTS

1. **Preface to Location Requirements.** This Section 3.7(1) provides guidance as to how to interpret and apply the location requirements in this Section 3.7. To better assist applicants and decision makers in understanding and responding to the community's aesthetic preferences and values, Sections 3.7(2) and 3.7(4) 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 that either (1) no more preferred locations or structures exist within 300 feet from the proposed site; or (2) any more preferred locations or structures within 300 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Sections 3.7(3) and 3.7(5) identifies "prohibited" locations and support structures on which the City shall not approve any small wireless facility permit application for any competitor or potential competitor.
2. **Locations.** Small wireless facilities must be installed in locations, ordered from most preferred to least preferred location, :
 - a. Locations within commercial or industrial zones on or along arterial streets;

- b. Locations within commercial or industrial zones on or along collector streets;
- c. Locations within commercial or industrial zones on or along local streets;
- d. Locations within mixed use or public use zones on or along arterial streets;
- e. Locations within mixed use or public use zones on or along collector streets;
- f. Locations within mixed use or public use zones on or along local streets;
- g. Locations within residential zones on or along arterial streets; and
- h. Locations within residential zones on or along collector streets.

Small wireless facilities are strongly discouraged in residential zones.

3. **Prohibited locations.** The City prohibits small wireless facilities to be installed on the following locations:
 - a. Within 50 feet of a school;
 - b. Within 50 feet of a fire station;
 - c. Located in front of storefront windows, primary walkways, primary business entrances or exits, designated historic structures or public park entrances; and
 - d. If approved to locate in a residential zone, poles must be placed at least ten (10) feet from any driveways and may not be placed directly in front of residential windows or doorways.
4. **Support Structures in the Public Rights-of-Way.** Small wireless facilities to be installed on support structures in the public rights-of-way shall be installed in accordance with the following preferences, ordered from most preferred to least preferred location:
 - a. Existing or replacement utility poles;
 - b. Replacement of existing standalone streetlight poles;
 - c. New, non-replacement standalone streetlight poles; and
 - d. New, non-replacement purpose built pole for concealed small cell wireless facilities.

5. **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures and similar structures in the public rights-of-way:
 - a. Existing decorative light poles, including but not limited to Downtown decorative, Mountain Park decorative, and residential decorative;
 - b. Flag poles;
 - c. Traffic signals, signs, traffic poles, cabinets and related devices;
 - d. City furniture, such as wayfinding signs and devices, public art, and bus shelters;
 - e. Any utility pole scheduled for removal or relocation within 12 months from the time the City acts on the small wireless facility permit application; and
 - f. New, non-replacement wood poles.

SECTION 3.8. DESIGN STANDARDS

1. **Overall Height.** Small wireless facilities cannot exceed four (4) feet above the existing support structure, plus the minimum separation from electrical lines required by applicable safety regulations and shall not be installed at a height exceeding forty-four (44) feet.
2. **Antennas.**
 - a. **Concealment.** Antennas must be mounted in a manner minimizing visual impacts, which may include flush-mounting and camouflaging. All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted (or covered by a film) using a flat, non-reflective color to match the underlying support structure.
 - b. **Antenna Volume.** Each individual antenna may not exceed three (3) cubic feet in volume. The cumulative volume for all antennas on a single small cell, including the shroud or radome, shall not exceed: (A) three cubic feet in residential areas; or (B) six cubic feet in nonresidential areas.
 - c. **Strand Mounting.** Strand mounted small wireless facilities are permitted, subject to the following criteria:
 - i. Strand mounted antennas may be allowed when utility lines are present.

- ii. Only two (2) strand mounted antennas are permitted between any two existing poles.
- iii. Antennas shall be placed as close as possible to the nearest utility pole, never to exceed more than six (6) feet from the pole unless a greater distance is technically necessary or required by the pole owner for safety clearance.
- iv. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic.
- v. Spooled or excess cabling, wires or fiber shall not be permitted on the pole or on the supporting cable strand.

3. Accessory Equipment.

- a. **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred design:
 - i. Underground where the existing utilities are primarily located underground;
 - ii. Integrated into the base of the underlying pole or support structure; or
 - iii. Mounted or attached on the underlying pole or support structure.

Applications that select preference (ii) or (iii) may be approved if the applicant demonstrates by clear and convincing evidence in the written record that the more preferred installation location would be technically infeasible.

- b. **Undergrounded Accessory Equipment.** All undergrounded accessory 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.
- c. **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole in a single equipment shroud to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations.

All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. 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, such as when the pole is a wooden utility pole, applicants shall route them through a minimum number of external conduits or a shroud that has been finished to match or be compatible with the underlying support structure.

All pole mounted equipment requires camouflaging, such as matching non-reflective paint, shielded lights, antenna covers, for all pole types.

- d. **Base-Mounted Accessory Equipment.** All base-mounted accessory 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. All base mounted equipment requires camouflaging, such as matching non-reflective paint, for all pole types.
- e. **Ground-Mounted Accessory Equipment.** Separate ground-mounted accessory equipment, including but not limited to any utility or transmission equipment, pedestals, cabinets, panels or electric meters is prohibited, except where the applicant demonstrates by clear and convincing evidence that installing the equipment in a more preferred location would be technically infeasible.
- f. **Accessory Equipment Size.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed nine and a half (9.5) cubic feet in volume. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment.

4. **Standards for Pole Types.**

- a. **Small Wireless Facilities Attached to Utility Poles with Overhead Lines.** Applicants are strongly encouraged to place on existing utility poles. Small wireless facilities located on wooden utility poles and non-wooden utility poles with overhead lines shall conform to the following design criteria:
 - i. Antennas shall be side mounted. If pole owner requirements and technical feasibility prevents side mounted antennas, City may allow top mounted.

- ii. Antennas which are mounted on poles shall be mounted as close to the pole as technically feasible from the surface of the utility pole. For clarity, an additional distance is allowed if needed for pole owner requirements.
 - iii. Any side-mounted antennas must be attached using a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm shroud.
 - iv. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations and pole owner requirements.
 - v. Ancillary equipment including, but not limited to, radios, cables, associated shrouding, disconnect boxes, meters, microwaves, and conduit, which is mounted on poles shall be mounted as close to the pole as technically feasible and allowed by the pole owner.
 - vi. Applicants shall locate small wireless facilities adjacent to existing tree coverage and shrubbery as screening to reduce the visual impact of equipment and antennas when possible.
- b. **Small Wireless Facilities Attached to Streetlight Infrastructure.** Applicants that propose to install small wireless facilities on an existing standalone streetlight poles must remove and replace the existing streetlight pole with a new streetlight pole designed to support the equipment or a Stealth Pole that is substantially similar to the City's standards and specifications. Streetlight poles are subject to the following criteria:
- i. Replacement pole must be located as near as feasible to the existing pole.
 - ii. The pole must be aligned and appropriately spaced with the other existing streetlights.
 - iii. All equipment (excluding disconnect switches), conduit and fiber must be fully concealed within the pole. The antennas must be camouflaged to appear as an integral part of the pole or be mounted as close to the pole as feasible.
 - iv. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

- v. Streetlight pole must include illumination and shielding as required by City Code.
- c. **Replacement Wood Utility Poles.** When placing on existing wood utility poles, the City prefers poles to be replaced. Replacement of the pole is at the applicant's expense. Replacement poles are subject to the following criteria:
- i. The replacement pole must match the approximate color and materials of the replaced pole or shall be the standard new pole used by the pole owner in the City.
 - ii. The replacement pole shall substantially conform to the material and design of the existing pole or adjacent poles located within the contiguous right-of-way.
 - iii. If existing utility pole has a streetlight attached, the replacement pole must also have a streetlight attached, which must comply with City standards.
 - iv. The replacement pole must comply with the Americans with Disabilities Act (ADA), city construction and sidewalk clearance standards, and city, state and federal laws and regulations in order to provide a clear and safe passage within the right-of-way.
 - v. The location of any replacement or new pole must comply with applicable traffic requirements, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect public health, safety or welfare.
 - vi. The abandoned pole must be removed within 30 days after relocation of existing equipment has been completed.
- d. **Purpose Built Pole (with or without streetlight).** Applicants may propose to install small wireless facilities for on a new, non-replacement pole with integrated, concealed small cell wireless facilities where installation on an existing pole is technically infeasible and the applicant meets the criteria of section 3.5. Purpose Built Poles shall meet the following design criteria:
- i. Install a new Stealth Pole designed as a streetlight, which will comply with the City's standards and specifications and can accommodate a small wireless facility that is substantially similar to the existing wireless facilities in the immediate vicinity.
 - ii. If there are no existing streetlights in the immediate vicinity nor allowed by City Code, the applicant may install a Stealth Pole without a streetlight

capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.

- iii. Antennas, antenna equipment and associated equipment enclosures (excluding disconnect switches), conduit and fiber shall be fully concealed within the structure.
- iv. All new poles and pole-mounted antennas and equipment shall substantially conform to the material and design of adjacent poles located within the contiguous right-of-way.
- v. If such concealment of wireless antennas and associated equipment within a pole is not technically feasible, or is incompatible with the pole design, then the antennas and associated equipment shroud or enclosure must be camouflaged to appear as an integral part of the structure or mounted as close to the pole as feasible, and must be reasonably related in size to the intended purpose of the facility and reasonable expansion for future frequencies and/or technologies, not to exceed the volumetric requirements in Section 3.8(2)(b).
- vi. New poles shall be located on corners or along property to allow for a continuous and consistent streetscape appearance. Poles are encouraged to be in alignment with existing trees and utilize existing trees or shrubbery to reduce the visual impact.
- vii. Applications that involve new, non-replacement poles may be approved so long as the applicant meets the required findings in Section 3.5(2).

5. **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must be shown in the permit application to demonstrate compliance with the noise limit in the applicable zone as set forth below.

Location type	Noise Exposure Limit
Residential	55 dBA
Non-residential	65 dBA

To the extent that the proposed equipment would exceed the applicable noise limit, the application may be approved if the applicant's acoustic analysis shows that the equipment would not cause a perceptible noise increase above the ambient noise limit or materially increase the existing ambient noise levels at the subject location. This provision shall be effective for the duration of the equipment being present in the public right-of-way.

6. **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. 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.
7. **Landscape Features.** Small wireless facilities shall not damage or remove any existing landscape features unless: (A) such landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the City and (B) the applicant submits and adheres to a landscape maintenance plan, and (C) tree removal, if any, complies with LOC Chapter 55 Tree Code. (Tree protection is required for construction pursuant to the Tree Code).

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. Landscape selection and maintenance must be performed in accordance with Lake Oswego Municipal Code sections 50.06.004(1) and 50.06.010(2), as may be amended or superseded.

8. **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. Use of barbed wire, razor ribbon, or any similarly dangerous security measures is prohibited. Fencing or any other obstruction to the public right of way is prohibited. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
9. **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 toll-free number to the owner/operator's network operations center. Signage shall comply with LOC Chapter 47 Sign Code.

Small wireless facilities may not bear any branding, advertisements, or other signage unless expressly approved by the City, required by law or recommended under FCC, OSHA, or other United States governmental agencies for compliance with RF emissions regulations.

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.

11. **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way.
12. **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
13. **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; (F) access to any fire escape; (G) sidewalks and active transportation access, including walking or biking, or (H) facilities similar to those in (A)-(G).
14. **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 accessory equipment shall be routed through or concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The City shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
15. **Spools and Coils.** To reduce visual 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.
16. **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. The City shall not approve a separate ground-mounted electric meter pedestal.

17. **Street Trees.** To preserve existing landscaping and street trees in the public rights-of-way, all work performed in connection with small wireless facilities shall comply with LOC Chapter 55 Tree Code. Work shall not cause any street trees to be damaged or removed. Where facilities are to be installed adjacent to any street tree, the applicant shall provide tree protection measures as required by the Planning Department in accordance with Article 55.08.

SECTION 3.9. PREAPPROVED DESIGNS.

1. **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the City, the City may designate one or more preapproved designs for small wireless facilities and other infrastructure deployments. This Section 3.9 sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
2. **Adoption.** The City may, in the City's discretion, establish a preapproved design when the City finds that a proposed preapproved design substantially complies with the design standards in this Policy. A decision by the City not to adopt a proposed preapproved design or the City's failure to act on a request for a proposed preapproved design is not appealable.
3. **Repeal.** The City may repeal any preapproved design by written notice posted at Lake Oswego City Hall. The repeal shall be immediately effective. The City's repeal, refusal to repeal or failure to act on a request to repeal a preapproved design is not appealable.
4. **Modified Review Process.** In nonresidential zones, applications for a preapproved design shall not be subject to the notice requirements in Section 3.5(1). In residential zones, applications for a preapproved design shall remain subject to the notice requirements in Section 3.5(1).
5. **Modified Approval Criteria.** When an applicant submits a complete application for a preapproved design, the City shall presume that the findings for approval in Sections 3.5(2)(a) and 3.5(2)(e) are satisfied and shall evaluate the application for compliance with the findings for approval in Sections 3.5(2)(b), 3.5(2)(c), 3.5(2)(d) and 3.5(2)(f).
6. **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the City adopt such preapproved design or not. The City's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

