



CITY ENGINEER POLICY
WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY

Within the scope of my authority to administer public rights-of-way within the City of Lake Oswego, and as specifically authorized by LOC 51.01.080(1), I hereby adopt the attached policy titled "Wireless Facilities in the Public Rights-of-Way," effective immediately.

DATED this 11th day of January, 2019

Erica Rooney
City Engineer, City of Lake Oswego

CITY OF LAKE OSWEGO	
CITY ENGINEER POLICY	Adopted: January 11, 2019 Revised:
GENERAL SUBJECT: WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY	

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SECTION 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND INTENT

- (a) 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.
- (b) 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.
- (c) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any 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

- (a) **"City"** means the City official responsible for reviewing applications for permits or approvals under this Policy and vested with the authority.
- (b) **"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, and (3) radio equipment shrouds mounted to the side of a streetlight or utility pole; (4) Stealth Pole

- (c) **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- (d) **“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.
- (e) **“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.
- (f) **“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.
- (g) **“RF”** means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.
- (h) **“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.
- (i) **“Stealth Pole”** means utility poles or streetlight poles designed to accommodate and entirely or nearly entirely conceal the incorporated personal wireless service facilities.

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.

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

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **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.
- (b) **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”).
- (c) **Option to Seek a Discretionary Permit.** A discretionary permit under section 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.
- (d) **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 other any permits and/or regulatory approvals issued by other departments or divisions within the City. 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

- (a) **“base station”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(1), as may be amended or superseded.
- (b) **“collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended or superseded.
- (c) **“eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended or superseded.
- (d) **“eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended or superseded.

- (e) “**existing**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended or superseded.
- (f) “**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.
- (g) “**site**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended or superseded.
- (h) “**substantial change**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended or superseded.
- (i) “**transmission equipment**” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended or superseded.

SECTION 2.3. SECTION 6409 APPLICATIONS, SUBMITTALS AND COMPLETENESS REVIEW

- (a) **Section 6409 Approval Application Contents.** All applications for a Section 6409 approval must include all the information and materials required in this section 2.3(a).
 - (1) **Application Form.** The applicant shall submit a complete, duly executed Section 6409 approval application on the then-current form prepared by the City.
 - (2) **Application Fee.** The applicant shall submit the applicable Section 6409 approval application fee established by City Council resolution.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation all transmission equipment, support structures and the legal boundaries of the leased or owned area surrounding the proposed wireless facility and any associated access or utility easements. The construction drawings must specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) depict the applicant’s plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iii) demonstrate that proposed project will be in full compliance with all applicable

health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

- (4) **Site Survey.** For any application in connection with a wireless facility within the public rights-of-way, the applicant shall submit a survey. The survey must identify and depict all existing boundaries, encroachments and other structures within 300 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.
- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and the wireless facility before and after the collocation or modification. The photographs and photo simulations must show the wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (6) **Project Narrative and Justification.** A written statement that explains in plain factual detail whether and why Section 6409 and the related FCC regulations at 47 C.F.R. §§ 1.40001 *et seq.*, as may be amended, superseded or recodified, require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term

is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and Oregon law to provide the services and construct the small wireless facility proposed in the application.
 - (9) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed collocation or modification and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (b) **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(b).
- (1) **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.
 - (2) **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.

- (c) **Application Completeness Review.** Within 30 calendar days after the City receives a duly filed small cell permit application, the City shall review the application for completeness and, if any application does not contain all the materials required in section 2.3(a) or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.
- (d) **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(d), a “substantive response” must include the materials identified as incomplete in the City’s notice.
- (e) **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

- (a) **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.
- (b) **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.

- (c) **Required Findings.** The City may approve or conditionally approve an application any application for a Section 6409 approval when the City finds that the proposed project:
 - (1) involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base station; and
 - (2) does not substantially change the physical dimensions of the existing wireless tower or base station.
- (d) **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:
 - (1) does not meet the required findings in section 2.4(c);
 - (2) involves the replacement of the entire support structure; or
 - (3) violates any legally enforceable law, regulation, rule, standard or permit condition reasonably related to public health or safety.
- (e) **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.
- (f) **Appeals.** Any decision by the City shall be final and not subject to any administrative appeals.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

In addition to all other conditions adopted by the City, 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 Policy.

- (a) **Permit Term.** The City's grant or grant by operation of law of a 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.

- (b) **City's Standing Reserved.** The City's grant or grant by operation of law of an eligible facilities request 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.
- (c) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a collocated or modified wireless facility approved or deemed-approved, the permittee shall provide the City with documentation reasonably acceptable to the City that the collocated or modified 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.
- (d) **Build-Out Period.** This Section 6409 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. If this build-out period expires, 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.
- (e) **Site Maintenance.** Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain 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, a utility operator fails to repair and maintain 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 utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days.
- (f) **Compliance with Laws.**
 - (1) 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 this Section 6409 approval, 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.

- (2) 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).
 - (3) 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 pursuant to the Lake Oswego Municipal Code. If the utility operator has no current registration, no notice shall be required.
 - (4) 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.
- (g) **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.

- (h) **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.
- (i) **City's Management of the Rights-of-Way.** Notwithstanding the prior sentence, the City's 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.
- (j) **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 a person responsible for the facility, which includes without limitation such person's full name, title, direct telephone number, facsimile 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 if either the responsible person or such person's contact information changes.
- (k) **Indemnification.** The permittee and, if applicable, the property owner upon which the collocated or modified 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 or any deemed approval of this Section 6409 approval, 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 this Section 6409 approval or the underlying 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 private property 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 property 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 this Section 6409 approval, and that such indemnification obligations

will survive the expiration, revocation or other termination of the right to collocate or modify the underlying wireless facility.

- (l) **Permit Revocation.** Any Section 6409 approval 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 Section 6409 approval 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 Section 6409 approval granted under this Policy may be revoked only by the City Council after a duly noticed public hearing. The City Council may revoke a Section 6409 approval 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 Section 6409 approval shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a Section 6409 approval, the Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

- (m) **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 Section 6409 approval application, Section 6409 approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the Section 6409 approval (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.

- (n) **Abandoned Wireless Facilities.** The collocated or modified wireless facility authorized under this Section 6409 approval shall be deemed abandoned if not operated for any continuous 12 month period. Within 30 days after the collocated or modified wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Lake Oswego Municipal Code. In the event that neither the permittee nor the property 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 property 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.
- (o) **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.

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

SECTION 3.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable 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) **Small Cell Permit.** A "small cell 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.
- (c) **Other Permits and Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small cell permit for the proposed facility. Any application submitted without such small cell 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

- (a) “**antenna**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
- (b) “**arterial road**” means a road designed primarily for long-distance travel, high traffic capacity and low accessibility from neighboring roads. The term “arterial road” as used in this Policy includes freeways, major arterials and minor arterials as defined in the City of Lake Oswego Transportation System Plan.
- (c) “**collector road**” means a road designed primarily as a connection between local roads and arterials, , moderate traffic capacity and high accessibility from local roads. The term “collector road” as used in this Policy includes major collectors and neighborhood collectors as defined in the City of Lake Oswego Transportation System Plan.
- (d) “**collocation**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.
- (e) “**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.
- (f) “**FCC**” means the Federal Communications Commission or its duly appointed successor agency.
- (g) “**FCC Shot Clock**” means the presumptively reasonable time frame within which the City must act on a wireless application, as defined by the FCC and as may be amended from time to time.
- (h) “**local road**” means a road 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 road” as used in this Policy includes all local streets as defined in the City of Lake Oswego Transportation System Plan.
- (i) “**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.
- (j) “**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.

SECTION 3.3. SMALL CELL PERMIT APPLICATION REQUIREMENTS

- (a) **Small Cell Permit Application Contents.** All applications for a small cell permit must include all the information and materials required in this section 3.3(a).
- (1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current City form.
 - (2) **Application Fee.** The applicant shall submit the applicable small cell permit application fee established by City Council resolution. Batched applications must include the applicable small cell permit application fee for each small wireless facility in the batch.
 - (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 300 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
 - (4) **Site Survey.** For any small wireless facility proposed to be located within the public rights-of-way, the applicant shall submit a survey. The survey must identify and depict all existing boundaries, encroachments and other structures within 300 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in section 3.5.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Post-Approval Public Notices.** The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under [section]. Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.
- (9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant’s regulatory status under federal and Oregon law to provide the services and construct the small wireless facility proposed in the application.
- (10) **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 partially-executed 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.

- (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
- (b) **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 CELL PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in this section 3.4(a).
 - (1) **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 subject to section 3.4(d). 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.
 - (2) **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.

- (b) **Application Completeness Review.** Within 30 calendar days after the City receives a duly filed small cell permit application, the City shall review the application for completeness and, if any application does not contain all the materials required in section 3.3 or any other publicly stated requirements, send a written notice to the applicant that identifies the missing or incomplete requirements.
- (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 section 3.4(c), a “substantive response” must include the materials identified as incomplete in the City’s notice.
- (d) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a batch; provided, however, that small wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- (e) **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

- (a) **Post-Approval Public Notice.** After any final approval, public notice shall be mailed to all properties and record owners of properties within 300 feet from the project site measured laterally in both directions. The notice must 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 cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures and 90 days for new structures.

- (b) **Required Findings.** The City may approve or conditionally approve a complete and duly filed application for a small cell permit when the City finds:
 - (1) the proposed project meets the definition for a "small wireless facility" as defined by the FCC;
 - (2) 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;
 - (3) the proposed project would not be located on a prohibited support structure identified in section 3.7;
 - (4) 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;
 - (5) the proposed project complies with all applicable design standards in section 3.7;
 - (6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and

- (c) **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 cell permit application as may be necessary or appropriate to ensure compliance with this Policy.

- (d) **Decision Notices.** Within five calendar days after the City acts on a small cell 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.

- (e) **Appeals.** Any decision by the City shall be final and not subject to any administrative appeals.

SECTION 3.6. STANDARD CONDITIONS OF APPROVAL

In addition to all other conditions adopted by the City for a small cell permit, all small cell permits issued under this Policy shall be automatically subject to the conditions in this section 3.6(a).

- (a) **Permit Term.** This small cell permit will automatically expire five (5) years and one day from its issuance. Any other permits or approvals issued in connection with any collocation, modification or other change to this small wireless facility, 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 this small cell permit is issued in connection with any structure owned or controlled by the City and located in the public rights-of-way, this small cell 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.
- (b) **Permit Renewal.** At least ninety (90), but no more than one hundred eighty (180), days before the expiration of a permit granted under this section, the permittee may apply for permit renewal. The permittee must demonstrate that the subject small wireless facility complies with all the conditions of approval associated with this small cell 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, this small cell permit will automatically expire 5 years and one day from its issuance.
- (c) **Post-Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the City with documentation reasonably acceptable to the City that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data, and site photographs.

- (d) **Build-Out Period.** This 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. If this build-out period expires, 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.
- (e) **Site Maintenance.** Every utility operator shall install and maintain all small wireless facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain small 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, a utility operator fails to repair and maintain small 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 utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within 30 days.
- (f) **Compliance with Laws.**
- (1) The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law (“laws”) applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee’s obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the 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.
- (2) 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).

- (3) 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.
- (4) 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.
- (g) **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 small wireless facility, construction equipment and/or other inventory and supplies left overnight in the vicinity of the small wireless facility.
- (h) **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.

- (i) **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 a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile 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 if either the responsible person or such person's contact information changes.
- (j) **Indemnification.** The permittee and, if applicable, the property 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 this small cell 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 this small cell permit or the small 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 private property 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 property 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 this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.
- (k) **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.

- (l) **Record Retention.** Throughout the permit term, the permittee must maintain a complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, “records”). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City’s regular files will control over any conflicts between such City-controlled copies or records and the permittee’s electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

- (m) **Abandoned Wireless Facilities.** The small wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous 12-month period. Within 30 days after a small wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Lake Oswego Municipal Code. In the event that neither the permittee nor the property 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 property 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.

- (n) **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.

- (o) **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 small 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.
- (p) Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. 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 existing pole placement 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.
- (q) **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.
- (r) **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").
- (s) **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 cell 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 3.7. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this section 3.7. To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) 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. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.
- (b) **Locations.** The City prefers small wireless facilities to be installed in locations, ordered from most preferred to least preferred, as follows:
- (1) locations within commercial or industrial districts on or along arterial roads;
 - (2) locations within commercial or industrial districts on or along collector roads;
 - (3) locations within commercial or industrial districts on or along local roads;
 - (4) locations within residential districts on or along arterial roads; and
 - (5) locations within residential districts on or along collector roads.
- (c) **Support Structures in the Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- (1) existing or replacement wood utility poles;

- (2) replacement streetlight poles;
 - (3) new, non-replacement streetlight poles; and
 - (4) new, non-replacement poles for small wireless facilities that are concealed.
- (d) **Prohibited Support Structures.** The City prohibits small wireless facilities to be installed on the following support structures in the public rights-of-way:
- (1) decorative light poles;
 - (2) decorative flag poles;
 - (3) traffic signals, signs, traffic poles, cabinets and related devices;
 - (4) any utility pole scheduled for removal or relocation within 12 months from the time the City acts on the small cell permit application; and
 - (5) new, non-replacement wood poles.

SECTION 3.8. DESIGN STANDARDS

- (a) **Overall Height.** Small wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet, or (B) four feet above the existing support structure, or (C) shall not be installed at a height exceeding forty-four (44) feet, whichever is less.
- (b) **Antennas.**
- (1) **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 a flat, non-reflective color to match the underlying support structure.
 - (2) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas in total on pole may not exceed six cubic feet in volume.
 - (3) **Strand Mounting.** Standard mounted antenna may be allowed when utility lines are present. Only one strand mounted facility is permitted per cable between any two existing poles and 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. No strand mounted device shall be located in or above the portion of the roadway open to vehicular traffic. strand mounted devices must be installed to cause the least visual impact and with the minimum exterior cabling or wires (other than the original strand) necessary to meet the technological needs of the facility

(4) **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: (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 (i) or (ii) 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. If applicants want to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced, the permittee shall abide by all tree removal and protection standards of the City.
- (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole 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. Pole-mounted equipment may be concealed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match 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.** The City shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.
- (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 if installed in residential and non-residential districts. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment.

(c) **Standards for Pole Types.**

- (1) **Small Cell Placement on Streetlighting Infrastructure.** Applicants that propose to install small wireless facilities on an existing streetlight must remove and replace the existing streetlight pole with a Stealth Pole that is substantially similar to the City's standards and specifications. To mitigate any material changes in the street lighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include illumination and shielding as required by City Code. . All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (2) **Wood Utility Poles.** Applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. If permitted by the City, 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. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

- (3) **New, Non-Replacement Poles.** Applicants that propose to install small wireless facilities on a new, non-replacement pole must:
- (A) 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.
 - (B) If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole 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. All antennas, whether on a new streetlight or other new pole, must be installed such that it is encapsulated into the pole with stealth technology and aesthetics. New, non-replacement poles will require justification for why new pole and location is necessary for service provision.
- (d) **Noise.** Small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in the Lake Oswego Municipal Code section 34.10.539, as may be amended or superseded, and shall not exceed, either on an individual or cumulative basis, the noise limit in the applicable district.
- (e) **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.
- (f) **Landscape Features.** Small wireless facilities shall not displace any existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the City and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. 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.
- (g) **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. The City shall not approve any

barbed wire, razor ribbon, or any similarly dangerous security measures. The City shall not approve fencing or any obstruction to the public right of way. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.

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

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.

- (n) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (o) **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.
- (p) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If a tree trimming or removal is required, applicant is required to follow City Tree Removal Code and permitting process.