

6.49

Siting and Installation of Wireless Communications Equipment

(1). This regulation sets forth the requirements for siting and installation of wireless communications systems and equipment in, on and along public rights of way and public airspace in the City of Malden and is applicable to any entity other than the City of Malden.

(2). Siting and installation contemplates use of existing utility poles or structures and does not contemplate installation of new poles or structures. Installation of new poles or structures in and along public rights of way, or use of municipally owned poles shall require a separate license agreement approved by the City of Malden between the Provider and the City of Malden. A municipal pole or structure includes, without limitation, any pole, building, facility, transportation device or sign, or traffic light or sign, or other structure owned by the City of Malden.

(3) This regulation is intended to and shall apply prospectively to all pending petitions under review and all petitions filed. This regulation is intended to and shall apply retroactively to all previously approved petitions and installed wireless communications systems presently located in, on and along public rights of way and public airspace located in the City of Malden.

6.49.01 Definitions:

(1). "Wireless Communications Equipment" means any equipment, systems and/or facilities associated with wireless transmission services in direct contact with, attached, and/or supported by a structure or utility pole, including, without limitation: radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, cabling, hardware, one or more antenna, radio transceivers, coaxial or fiber-optic cable, tower, base station, metal strands, anchoring equipment, guying equipment, mechanical equipment, electronic equipment, enclosures, assemblages, devices and supporting elements attached and used to generate, receive, transmit or produce a signal used for communication and/or data transmission, including radio/television/satellite/internet broadcast equipment, Personal Wireless Service Facilities (PWSF), Distributed Antenna System (DAS), Small Cell Facilities (SCF), and Cellular on Wheels or Cell on Wheels (COW), whether self-contained or mounted.

(2). The definition of wireless communications equipment is without limitation, and is intended to encompass currently existing systems, equipment and facilities, as well as those which may become available for use with wireless communications as technological advancements occur and systems, equipment and facilities become outdated and outmoded.

(3). "Antenna" means any device affixed to a utility pole which transmits and receives wireless radio signals, whether embedded or external, including without limitation any system of wires, poles, rods, reflecting discs, dishes, whips, or other similar devices used for the transmission or reception of electromagnetic waves.

(4). "Personal Wireless Service Facilities" (PWSF) means amenities and equipment for the provision of personal wireless services.

(5). "Distributed Antenna System" (DAS) means a network of one or more antennas and related fiber optic nodes typically mounted to or located at utility poles which provide access and signal transfer for wireless service providers and includes the equipment location, "hub", or

“hotel” where the DAS network interconnects with the wireless service provider’s facilities to provide the signal transfer services.

(6). “Small Cell Facility” means the antenna, radio, power source and meter, disconnect switch, fiber optic cable, and supporting equipment.

(7). “Cellular on Wheels” or “Cell on Wheels” (COW) means a mobile cell site or base station used to provide temporary cellular network coverage.

(8). “Pole” means a properly constructed structure or utility pole located in or on the public right of way or the utility easement area adjacent to the public right of way which is intended to support or house wireless communications equipment.

(9). “Provider” means any wireless service provider petitioning to site and install wireless communications equipment.

(10). “Provider’s System” means the Provider’s Wireless Communications Equipment.

(11). “Existing” means already lawfully and properly constructed.

(12). “City” means the City of Malden, by and through the Malden City Council.

6.49.02. Definitions subject to modification.

From time to time additional definitions may be added at the City’s discretion.

6.49.03. Review authority.

In accordance with MGL c. 166, the City Council shall review and approve all petitions for licenses to install wireless communications equipment on Poles within the City of Malden. The City Council shall receive input from the City Inspector of Wires, City Building Inspector and City Engineer prior to approval of any petition. Approval shall be consistent with the provisions contained herein and all other relevant federal, Commonwealth and local regulations.

6.49.04. Completeness of Petition Required.

(1). A petition shall not be considered properly filed unless it is complete.

(2). No petition shall be accepted for consideration until all information and documentation required herein has been submitted by the Provider.

(3). The sixty (60) day determination period shall not begin until a petition is properly filed.

(4). A petition shall not be granted unless any further information and documentation requested by the City is submitted by the Provider, and the petition is reviewed by City inspectional officials designated herein.

(5). If the petition fails to comply with the provisions herein, a written notice of denial shall be sent to the Provider

6.49.05. Public property license agreement required.

Any wireless communications equipment intended for installation upon any public utility above or adjacent to City owned lights, structures, utility poles, traffic poles or fixtures, shall be

subject to a license agreement between the Provider and the City, shall require annual inspection, and shall be subject to a bi-annual inspection fee of \$500.00 per installation.

6.49.06. Dimensions and appearance.

(1). All wireless communications equipment shall be designed and installed in accordance with industry safety codes, regulations and standards as they exist at the time of installation, and shall comply with all codes, regulations and standards as amended from time to time.

(2) All wireless communications equipment shall be limited to an antenna array no larger than 48-inch in height and 36-inches in width and one equipment cabinet of less than 7-cubic feet in exterior volume.

(3) All cables between the antenna, mounting bracket and the equipment cabinet shall be concealed within a sleeve.

(4). All wireless communications equipment shall be installed with adherence to minimum clearance requirements between communications attachments and power attachments,

(5) Antenna arrays and equipment cabinets shall be mounted directly to any utility pole or structure no more than 4-inches from the pole or structure, with no down tilt, at least 16-feet above ground level using a bracket designed to withstand anticipated hurricane wind levels for the Malden area designated by the International Building Code. No part of the wireless communications equipment shall extend more than fifty (50) inches above the height of the pole.

(6) Installations must use all design techniques to minimize visual impacts including use of colors for the antenna array, cable sleeves, mounts and equipment cabinet reasonably requested by the Inspector of Wires. The name of the permit holder and permit number shall be stenciled on the side of the equipment to the satisfaction of the Building Inspector.

(7). Wireless communications equipment attachments will not be permitted via double polling, onto existing double poles, onto poles not suited to manage the weight of wireless communications equipment, or onto poles which will be or become overstressed by any proposed wireless communications equipment.

(8). Wireless communications equipment shall not interfere with public safety or travel in, on and along the public right of way.

(9). The wireless communication equipment installation shall comply with all requirements as deemed necessary by the Director of Permits, Inspections and Planning including height, aesthetics, weight, and projection from the pole to which it is attached.

(10) The wireless communication equipment shall not be mounted to the exterior of a historic or decorative pole.

6.49.07. No adverse effect upon adjacent properties.

No installation of wireless communications equipment shall adversely affect access to or setbacks for any properties or landscaping adjacent to the location of installed wireless

communications equipment without the prior express written permission of the owner(s) of such adjacent properties

6.49.08. No adverse effect upon pedestrian or other rights of way or removal of public shade trees.

No installation of wireless communications equipment shall adversely affect free travel along public rights-of-way by all modes of transportation or access to public or private property. No installation shall be allowed that requires the removal of a public street tree.

6.49.09. No adverse effect upon other utilities.

No installation of wireless communications equipment shall adversely affect any existing utilities without the prior express written permission of such utilities owner(s). Installation shall not affect, physically interrupt or interfere with the facilities in the public rights-of-way of other existing utilities or municipal services.

6.49.10. Obligation to minimize harm to public shade trees and repair and restore damages.

Installations shall be chosen to minimize pruning and other adverse impacts to public shade trees during installation and long-term maintenance. Any pruning shall be done under the supervision of the City of Malden Tree Warden or Director of Public Works. Trimming of any branches of over 4-inches in circumference shall require the installation of a new public street tree of at least 6-inches in diameter at a location to be designated by the City's Public Works Director.

The Provider shall, at Provider's sole cost and expense, promptly repair and restore to original condition in accordance with the City's specifications any street pavement, sidewalks or other portions of the right-of-way which were disturbed or disrupted by installation of wireless communications equipment, however and wherever these conditions occurred. Provider shall, to the maximum extent possible, coordinate all installations, repairs and maintenance with the City and other utilities so as to minimize disruption to pedestrian and vehicular traffic, use and access.

6.49.11. Petition Process.

All petitions to install wireless communications equipment must be made in writing, filed with the City Clerk of the City of Malden on behalf of the Malden City Council, with a copy to the City of Malden Permits, Inspections and Planning Director. The sixty (60) day deadline for consideration shall begin upon receipt of a completed petition as described herein.

6.49.12. Contents of Written Petition.

The written petition must include the following information and documentation:

- (1). filing fee of \$500.00 payable to the City of Malden;
- (2). Provider's name, address, contact information, telephone number, and designated agent, attorney, and/or representative contact information;
- (3). Contact information of the individual with whom the City can reach for maintenance, repair, inspection and upkeep information; the Provider shall have a duty to maintain this information and annually provide written confirmation to the City of updated contact information;
- (4). Pole location, number, nearest abutting property address
- (5). Pole Owner(s) name, address and contact information;
- (6). Identification of any other Users of the Pole, whether authorized or not;
- (7). An engineering plan, prepared by a Massachusetts registered professional engineer that includes: a city-wide map and list of all wireless communications equipment owned by the petitioner, an aerial map showing the area around the proposed equipment locations, a photo of the utility pole overlaid with a conceptual diagram of the equipment, plans with the details of the proposed wireless communications equipment and wiring diagram to be installed, all other equipment currently attached to the pole, whether in use or inactive, the area surrounding the Pole and proposed wireless communications system, and any other identifying data in the proposed vicinity;
- (8). Letter or license from the Owner(s) of the Utility Pole, authorizing the installation of the wireless communications system, including and indemnification by the Owner therein as to the structural integrity and soundness of the support the proposed wireless communications equipment;
- (9). An affidavit of a licensed radio frequency engineer that certifies that the wireless communications equipment as installed and operated will not cause interference to any lawfully operated emergency communications system, television, telephone or radio in the surrounding area and an affidavit of a certified radiation safety specialist or RF Safety Officer with Massachusetts experience that demonstrates that the resulting radio frequencies levels from the equipment comply with Federal Communication Commission and Massachusetts Department of Public health and safety standards at the street level and the nearest adjoining occupied building
- (10). Letter or license from the Federal Communications Commission evidencing Provider's authority to transmit and receive wireless telecommunications.
- (11). Written acknowledgment by the Provider of the following, in substantially this form: "Provider acknowledges that locating wireless systems in, on and along the public right of way and public airspace of the City affects the City and its inhabitants. Provider acknowledges that Provider's wireless communications equipment is for Provider's commercial enterprise and competitive use and purposes, distinct from any municipal non-profit purpose the City may have to use its public right of way and airspace or to locate municipal equipment. Provider agrees to permit the City to place or attach its own equipment to any pole located within the City, whether owned by the City or not, for municipal use purposes as they arise. The City will notify the Provider if the need arises for the City to place or attach equipment for municipal purposes to Provider's poles located within the City. Provider agrees to pay annual inspectional

fees to accommodate use of poles in, on and along public right of way and public airspace within the City.”

(12). The City has the right to request any other documentation or information from the Provider to assist the City with making a determination on the written petition.

6.49.13. Timeframe for Review.

Within sixty (60) days following receipt of a complete Petition in accordance with the provisions herein, the City shall hold a public hearing on the Petition and issue a determination granting or denying the petition.

6.49.14. Tolling, review, determination and appeal.

(1). The sixty (60) day review period may be tolled under the following circumstances:

- A. The petition is not properly before the City for consideration, in which event the Provider will be notified the petition is not properly filed within the meaning of the provisions herein.
- B. The petition remains or is deemed incomplete, in which event the City will notify the Provider in writing as to any additional information, documentation or fee necessary, and the sixty (60) day determination timeframe shall begin to run upon Provider’s filing of a complete petition with all information, documentation and fees.
- C. If the Provider fails to submit additional information as requested, in which event the City will notify the Provider as to the additional documentation sought, and the sixty (60) day determination timeframe shall begin to run upon Provider’s filing of the additional documentation, unless the petition remains incomplete.
- D. Upon mutual agreement of the Provider and the City, in which event the Provider and the City shall agree upon the timeframe for extension.

(2). The determination issued by the City shall be in writing, and in the event the petition is denied, the City shall provide the basis for denial in its written determination.

(3). In the event of denial, the Provider shall have the right to appeal the denial via Petition for Review of the City’s denial in the Middlesex Superior Court.

(4). In the event of approval, the Provider shall have the right to install wireless communications equipment provided that all requisite permits and inspections are obtained from the City Permits, Inspections and Planning Department.

6.49.15. Requirement to file new petition.

Each petition pertains to a single attachment only. A new petition shall be required in the event of any additional attachment not depicted in an originally approved petition, or substantial replacement, rebuild, or alteration of any wireless communications equipment which was the subject of an originally approved petition. The determination regarding substantial replacement, rebuild and/or alteration shall solely be with the City Director of Planning, Inspections and Permits.

6.49.16. Annual inspection.

A fee of \$500.00 shall be paid annually for inspection of wireless communication equipment by City Inspectors to insure compliance with the requirements herein. Provider shall be required to request the annual inspection and provide payment of the inspection fee at the time of inspection. At the time of the inspection, Provider shall be required to provide updated contact information to the City Permits, Inspections and Planning Director. Provider's failure to request annual inspection and/or failure to provide payment shall be deemed lack of compliance with the provisions herein and result in an Order to Remove wireless communications equipment.

6.49.17. Order to Remove.

(1). The City reserves the right to order Provider to remove any wireless communications equipment previously permitted hereunder, in the event wireless communications equipment installed no longer complies with the provisions herein, or becomes in a state of disrepair, or becomes inactive, or becomes a danger or poses a threat to the public, or is known, discovered or demonstrated as failing to comply with or adhere to any federal, state or municipal requirements and regulations, including, without limitation, any environmental, health or emissions standards or regulations, or interferes or disrupts City services, utilities or public right-of-way or public airspace, in any way, without limitation.

(2). Written Order to Remove shall be issued by the City Permits, Inspections and Planning Director to the Provider, and the Provider shall remove all wireless communication equipment as ordered within ten (10) calendar days from the date of the Order to Remove.

(3). In the event the Provider fails to remove wireless communications equipment as ordered, within ten (10) calendar days following issuance of Order to Remove, the City shall have the right to remove the wireless communications equipment, at Provider's sole cost and expense. Provider's failure shall be grounds for denial of any petitions filed thereafter.